Replaced by 1996

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter C—Areas Subject to Special Laws

[Circular 1951]

PART 115—REVESTED OREGON AND CALIFORNIA RAILROAD AND RECONVEYED COOS BAY WAGON ROAD GRANT LANDS IN OREGON

SALE OF TIMBER-ON O. AND C. LANDS

1. A paragraph (f) is added to § 115.39 to read as follows:

§ 115.39 *Sales and appraisals.* * * *

(f) When the Director determines that good forest management requires the rapid removal of windthrown, insect-damaged or fire-killed timber or other salvage material, he may waive any or all marketing area restrictions as to sales of any timber which may be classified as salvage in nature by the authorized officer. Salvage sales may include such minimum amounts of intermingled or adjacent green timber as are necessary to insure economic operations.

2. Paragraph (b) (3) of § 115.45 is amended to read:

§ 115.45 *Action on bids.* * * *

(b) * * *

(3) Timber which has been determined by the authorized officer to be salvage in nature, which has been advertised as such, which has not been affected by a marketing area waiver issued under § 115.39 (f), and which is sold under the terms of this section because no bids were received within the time specified in the notice of sale, may be manufactured in any O. and C. marketing area which has been established by the Secretary of the Interior, or the Director, Bureau of Land Management.

(Sec. 5, 50 Stat. 875; 43 U. S. C. 1181e)

DOUGLAS MCKAY,
Secretary of the Interior.

MARCH 20, 1956.

[F. R. Doc. 56-2268; Filed, Mar. 26, 1956; 8:46 a. m.]

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Repl. by C-2171

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter Q—Reclamation and Irrigation

[Circular 1952]

PART 230—RECLAMATION OF ARID LANDS BY THE UNITED STATES

EXCHANGES

Paragraph (a) of footnote 1 to Part 230 is amended to read as follows:

1 * * *

(a) The act of August 13, 1953 (67 Stat. 566; 43 U. S. C. secs. 451–451k), provides for the exchange of certain unpatented farm units or private lands on a Federal irrigation project, for farm units available on the same or any other such project, and the amendment of farm units by the addition of contiguous or noncontiguous land on the same project. For the regulations under this act see Part 406, Chapter II, of this title.

(Sec. 10, 32 Stat. 390, as amended; 43 U. S. C. 373)

CLARENCE A. DAVIS,
Acting Secretary of the Interior.

APRIL 17, 1956.

[F. R. Doc. 56-3166; Filed, Apr. 23, 1956; 8:51 a. m.]

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1953]

PART 160—GRAZING LEASES

MISCELLANEOUS AMENDMENTS

A new paragraph (b) is added to § 160.5; § 160.12, paragraph (c) is revoked; § 160.22, paragraphs (a) and (d) are amended.

1. In § 160.5 *Application and lease,* the present section is designated as paragraph (a). A new paragraph (b) is added as follows:

(b) A filing fee of $10 will be charged for each grazing lease application, including an application arising out of the assignment of leased lands, when it embraces in whole or in part lands which ar not already under lease by the applicant or by th assignor on the date of filing such application.

2. In § 160.12 *Leased lands subject to classification and disposition; compensation to lessee for loss of lands and for improvements,* paragraph (c) is revoked.

3. In § 160.22 *Pledge of leases as security for loans; applications for extension of lease by borrower-lessee,* paragraphs (a) and (d) are amended to read as follows:

(a) A lease may be pledged as security for a loan of $500 or more from a lending agency if the loan is for the purpose of furthering the lessee's livestock operations. Before a loan is made, the lending agency may ascertain from the authorized officer the status of the grazing lease and other pertinent information relating thereto. A service fee of $10 will be charged non-federal lending agencies for searching the records to furnish such information.

* * * * *

(d) Where a lending agency files in the office of the authorized officer notice that it has made a loan and has accepted a grazing lease as security therefor, in conformity with the provisions of this section, such agency will be advised of any adverse action taken affecting the lease, but the failure to give timely notice of such adverse action shall impose no legal liability or obligation on the Bureau or any of its employees.

(Sec. 2, 48 Stat. 1270; 43 U. S. C. 315a)

CLARENCE A. DAVIS,
Acting Secretary of the Interior.

APRIL 23, 1956.

[F. R. Doc. 56-3305; Filede Apr. 27, 1956; 8:47 a. m.]

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Repl. by C-2161

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter C—Areas Subject to Special Laws

[Circular 1954]

PART 115—REVESTED OREGON AND CALIFORNIA AND RECONVEYED COOS BAY WAGON ROAD GRANT LANDS IN OREGON

PERMITS FOR RIGHTS-OF-WAY FOR LOGGING ROADS

1. Section 115.166 (a) is amended to read as follows:

§ 115.166 *Agreements and arbitration between permittee and licensee respecting compensation payable by licensee to permittee for use of road.* (a) In the event the United States exercises the rights received from a permittee hereunder to license a person to remove forest products over any road, right-of-way, or lands of the permittee or of his successor in interest, to the extent that such matters are not covered by an agreement under § 115.165, such licensee will be required to pay the permittee or his successor in interest such compensation and to furnish him such security, and to carry such liability insurance as the permittee or his successor in interest and the licensee may agree upon. If the parties do not agree, then upon the written request of either party delivered to the other party, the matter shall be referred to and finally determined by arbitration in accordance with the procedures established by § 115.169. During the pendency of such arbitration proceedings, the licensee shall be entitled to use the road, right-of-way, or lands involved upon payment, or tender thereof validly maintained, to the permittee of an amount to be determined by the authorized officer and upon the furnishing to the permittee of a corporate surety bond in an amount equal to the difference between the amount fixed by the authorized officer and the amount sought by the permittee. The licensee shall also, as a condition of use in such circumstances, maintain such liability insurance in such amounts covering any additional hazard and risk which might accrue by reason of the licensee's use of the road, as the authorized officer may prescribe.

2. Section 115.171 (b) is amended to read as follows:

§ 115.171 *Payment to the United States for road use.* * * *

(b) In addition, where the permittee receives a right to use a road constructed or acquired by the United States, which is under the administrative jurisdiction of the Bureau of Land Management, he will be required to pay to the United States for the use thereof, except where he transports forest products purchased from the United States through the Bureau, a fee to be determined by the authorized officer who shall base his determination upon the amortization of the replacement costs for a road of the type involved, together with a reasonable interest allowance on such costs, plus costs of maintenance if furnished by the United States and any extraordinary costs peculiar to the construction or acquisition of the particular road. In arriving at the amortization item, the authorized officer shall take into account the probable period of time, past and present, during which such road may be in existence and the volume of timber which has been moved and the volume of timber, currently merchantable, which probably will be moved from all sources over such road. The authorized officer may fix the rate at which payments shall be made by the permittee during his use of the road: *Provided, however,* That this paragraph shall not apply where payment for such road use to another permittee is required under §§ 115.154 to 115.179: *Provided further,* That where the United States is entitled to charge a fee for the use of a road, the authorized officer may waive such fee if the permittee grants to the United States and its licenses the right to use, without charge, permittee's roads of approximately equal value as determined under the methods provided in this paragraph and paragraph (b) of § 115.166, as may be applicable.

3. Section 115.174 (a) is amended by adding at the end thereof two new subparagraphs (10) and (11) as follows:

§ 115.174 *Terms and conditions of permit.* (a) * * *

(10) Upon request of an authorized officer, to submit to the Bureau within 30 days with permission to publish, the detailed terms and conditions, including the fee which the permittee will ask as a condition of such licensee's use for the removal of forest products over any road or right-of-way which the United States and its licensees have acquired a right to use under § 115.162.

(11) To grant to the United States, upon request of an authorized officer, in lieu of the rights-of-way across legal subdivisions granted pursuant to § 115.162, such permanent easements on specifically described locations as may be necessary to permit the Bureau to construct roads on such legal subdivisions with appropriated funds: *Provided,* That at the time of the grant of such permanent easements the Bureau shall release, except for necessary connecting spur roads, the rights-of-way across such legal subdivisions previously granted: *Provided further,* That if the United States builds a road on such permanent easements it shall pay for any timber of the permittee which is cut, removed, or destroyed in accordance with § 115.167. The authorized officer shall waive the requirement under this paragraph, however, if the permittee makes a satisfactory showing to the authorized officer that he does not own a sufficient interest in the land to grant a permanent easement, and that he has negotiated therefor in good faith without success.

(Sec. 5, 50 Stat. 875; 43 U. S. C. 1181e)

CLARENCE A. DAVIS,
Acting Secretary of the Interior.

APRIL 30, 1956.

[F. R. Doc. 56-3502; Filed, May 3, 1956; 8:47 a. m.]

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Repl. by C-2165

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1955]

PART 101—GENERAL REGULATIONS INVOLVING APPLICATIONS AND ENTRIES

OFFICE HOURS OF LAND OFFICES; WHEN DOCUMENT IS FILED

Effective 30 days from publication hereof in the FEDERAL REGISTER a new center head and section are added to Part 101 as follows:

FILING OF DOCUMENTS

§ 101.20 *Office hours of land offices; when document is filed.* (a) Land offices and the Washington office of the Bureau of Land Management are open to the public for the filing of documents and inspection of records during the hours specified below on Monday through Friday of each week, with the exception of national holidays, the Monday following each national holiday which falls on a Sunday, and days upon which the office may be closed by Presidential or other administrative order. The hours during which the land offices and the Washington office are open to the public for the filing of documents and inspection of records are from 10:00 a. m. to 3:00 p. m., standard time or daylight saving time, whichever is in effect at the city in which each office is located.

(b) Any document required or permitted to be filed under the regulations of this chapter, which is received in the Land office or the Washington office, either in the mail or by personal delivery when the office is not open to the public shall be deemed to be filed as of the day and hour the office next opens to the public.

(c) Any document required by law, regulation or decision to be filed within a stated period, the last day of which falls on a day the land office or the Washington Office is officially closed, shall be deemed to be timely filed if it is received in the appropriate office on the next day the office is open to the public.

FRED A. SEATON,
Secretary of the Interior.

JUNE 21, 1956.

[F. R. Doc. 56-5099; Filed, June 27, 1956; 8:48 a. m.]

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Repl. by C-2309

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter C—Areas Subject to Special Laws

[Circular 1956]

PART 119—CHOCTAW-CHICKASAW LANDS, OKLAHOMA

AUTHORITY: §§ 119.1 to 119.13 issued under sec. 1, 69 Stat. 445; 43 U. S. C. 1102.

§ 119.1 *Statutory authority.* The act of August 3, 1955 (69 Stat. 445), authorizes the Secretary of the Interior to provide for the management and disposition of any interest of the United States in those lands which were reconveyed to the United States by deeds of conveyance executed on November 29, 1950 by the principal chief of the Choctaw Nation and the Governor of the Chickasaw Nation or which have been or may be reconveyed to the United States by any further or supplemental conveyances made under the authority of the Interior Department Appropriation Act of June 28, 1944 (58 Stat. 463, 483), the joint resolution of June 24, 1948 (62 Stat. 596), and the First Deficiency Appropriation Act of May 24, 1949 (63 Stat. 76, 84). Such reconveyed lands are referred to in this Part as "Choctaw-Chickasaw lands" and the act of August 3, 1955 is referred to as "the act".

(b) The act of June 28, 1944 (58 Stat. 463, 483), declared the Choctaw-Chickasaw lands to be part of the public domain subject to the applicable public land mining and mineral leasing laws.

§ 119.2 *Minerals.* (a) All deeds for lands disposed of under the act of August 3, 1955 (69 Stat. 445) will contain a reservation to the United States of all its rights to mineral deposits in the lands, together with the right to prospect for, mine, and remove them. Any minerals subject to the public land leasing laws so reserved to the United States may be disposed of to any qualified person under applicable laws and regulations, subject to such conditions as the authorized officer of the Bureau of Land Management deems necessary for the protection of the surface and other nonmineral values of the lands. Until rules and regulations are issued, reserved minerals other than those subject to the public land leasing laws are not subject to disposition or, except by an authorized Federal agency, to prospecting.

(b) All minerals in the Choctaw-Chickasaw lands, subject to the exception and qualifications in paragraph (a) of this section, are subject to the applicable public land mining and mineral leasing laws and the regulations thereunder (Parts 185, 191, 192, 193, 194, 195, 196 and 197 of this chapter).

§ 119.3 *Disposal of materials.* Materials on the Choctaw-Chickasaw lands, other than minerals subject to disposal under the public land mining and mineral leasing laws, are subject to disposal under the regulations of Part 259 of this chapter.

§ 119.4 *Rights-of-way.* Easements and permits for rights-of-way over the Choctaw-Chickasaw lands may be secured under the regulations of Part 244 of this chapter.

Published in 21 F.R. August 8, 1956

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§ 119.5 *Leases and permits for nonmineral resources.* (a) Unless otherwise provided for by the regulations in this part, the Choctaw-Chickasaw lands will not be subject to lease or permit for the development and use of nonmineral resources except (1) where disposal of fee title to the tract, in the discretion of the authorized officer of the Bureau of Land Management, is not in the public interest, (2) where the public interest will be served by the issuance of a lease or permit having a term of not to exceed one year, or (3) where the public interest will be served by the issuance of a lease under the regulations of Part 254 of this chapter.

(b) Leases and permits issued under paragraph (a) (2) of this section will be renewable in the discretion of the authorized officer of the Bureau of Land Management for periods not exceeding one year for each renewal.

(c) The authorized officer of the Bureau of Land Management, in his discretion, may specify the terms and conditions of leases and permits issued under paragraph (a) (1) and (2) of this section consistent with the policies and procedures of the Department of the Interior.

(d) Except for applications to lease under the regulations of Part 254 of this chapter, no particular form of application is required. The applicant, however, must describe the lands desired and the purpose for which he desires them. Every application must be accompanied by a filing fee of $10 which will not be returnable.

§ 119.6 *Disposal of surface fee.* Subject to the reservation of all rights of the United States to minerals in the lands and to the payment of the proportionate cost of any survey which may be necessary to describe properly any lands to be disposed of under the act, Choctaw-Chickasaw lands are subject to disposal as follows:

(a) Private sale of tracts to any person having a legal or equitable interest therein under the regulations of §119.7.

(b) Private sales to occupants under the regulations of § 119.8.

(c) Public sale of tracts and private sale of tracts unsold after offer at public auction, under the regulations of § 119.8.

(d) Private sale of tracts under the provisions of the act of June 4, 1954 (68 Stat. 173; 42 U. S. C. 869) and the regulations thereunder (Part 254 of this chapter).

(e) Conveyance to local governing bodies of tracts set apart for streets, alleys, or other public purposes under the regulations of § 119.10.

§ 119.7 *Sales to persons claiming a legal or equitable interest.* (a) Subparagraph 2 (a) (2) of the act authorizes the Secretary of the Interior to relinquish any tract of Choctaw-Chickasaw lands to any person having a legal or equitable interest therein.

(b) To qualify under subparagraph 2 (a) (2) of the act, a claim of legal or equitable interest must rest on uncertainty as to the title to the tract applied for, resulting from such things as inadequate surveys, judgments, decrees, or orders of condemnation in court proceedings in which the United States did not consent to be a party to the suit, or otherwise. No such claim will be recognized if it is based solely on a lease or permit from the Bureau of Land Management or its predecessors in interest to the lands.

(c) Any individual, group, or corporation which believes it has a legal or equitable interest in one or more tracts of Choctaw-Chickasaw lands may make an application therefor by filing, in duplicate, an application captioned "Claim of legal or equitable interest in Choctaw-Chickasaw lands" with the Manager of the land office at Santa Fe, New Mexico. No particular form of application is required but it must be typewritten or in legible handwriting and signed by the applicant. Every application must be accompanied by a filing fee of $10 which will be nonreturnable. The application must contain a description of the land claimed sufficiently complete to identify the location, boundary, and area of the land and, if possible, the approximate description or location of the land by section, township, and range. It must contain the full name and full post-office address of the claimant. It must also contain a full statement showing the basis for the claim of legal or equitable interest in the lands. The applicant may be called upon to submit documentary or other evidence in support of his claim. Valuable documents submitted by the applicant will be returned to him.

(d) The applicant will be required to publish once a week for four consecutive weeks, at his expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file with the land office at Santa Fe, New Mexico, their objections to the issuance of a relinquishment under the application. A protestant must serve on the applicant a copy of the objections and furnish evidence of such service. The applicant must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication had been had for the required time.

(e) The land applied for will be appraised on the basis of its fair market value at the time of appraisal. However, in determination of the price payable by the applicant, value resulting from improvements by the applicant or his predecessors in interest will be deducted from the appraised price, and consideration will be given to the equities of the applicant. In no case will the land be sold for less than a total of $10.

(f) Applicants will be required to make payment of the sale price of the land and for the cost of survey, if any, within the time stated in the request for payment.

§ 119.8 *Sales to occupants.* (a) Subparagraph 2 (b) of the act authorizes the Secretary of the Interior, in selling any tract of Choctaw-Chickasaw lands, to grant a preference right of purchase to any occupant of the tract who has, or whose predecessors in interest have, lawfully and continuously occupied the tract for home, business, or school purposes since April 30, 1949 or earlier.

(b) Before offering any tract at public sale, the land office manager at Santa Fe, New Mexico, will give any such occupant an opportunity to purchase the tract at its fair market value as appraised by the authorized officer of the Bureau of Land Management. In the event the occupant elects to purchase the tract, he will be required to comply with the requirements of § 119.7 (d) and (f). In the event the occupant elects not to purchase the tract, the land office manager will give the occupant an appropriate period within which the occupant, in the occupant's discretion, may remove improvements on the tract constructed by him or his predecessors in interest or elect to receive compensation for such improvements from the successful purchaser of the tract in an amount equal to the appraised value of the improvements as determined by the authorized officer of the Bureau of Land Management.

§ 119.9 *Public and subsequent private sales.* (a) Subparagraph 2 (a) (1) of the act authorizes the Secretary of the Interior to sell tracts of Choctaw-Chickasaw lands at public sale to the highest responsible bidder, or at private sale.

(b) Upon request of any interested party or upon his own motion, the manager of the land office at Santa Fe, New Mexico, may subject to the regulations in this Part, expose to sale at public auction tracts of Choctaw-Chickasaw lands at not less than their fair market value as appraised by the authorized officer of the Bureau of Land Management.

(c) The manager will cause a notice of sale to be published and posted consistent with the requirements of Part 250 of this chapter. The successful purchaser of a tract will be required to reimburse the Government for the cost of publication of such notices, or if more than one successful purchaser is involved, the several purchasers will be required to pay their proportionate share of such costs determined on an acreage basis.

(d) The land will be offered for sale at public auction, at not less than its appraised value, at the time and place fixed in the public notice. Bids may be made by the principal or his agent, either personally at the sale or by mail. Bids sent by mail will be considered only if received at the place and prior to the hour fixed in the notice of the sale. Sealed bids must be accompanied by certified checks, post office money orders, bank drafts, or cashiers' checks for the amounts of the bids and must be enclosed in sealed envelopes which must be marked as prescribed in the notice of sale. In the event that two or more bids sent by mail are identical in amount, they will be considered in the award of the lands in the order of their receipt as shown by the hour and date noted on the envelope.

(e) At the close of bidding, owners in fee simple of lands contiguous to the offered tract, providing that they or their agents are present at the sale, will be granted a preference right of purchase by offering at the sale to meet the highest bid for such tract. In the event two or more preference claimants offer to meet the highest bid and in the absence of an agreement among them as to the award of the lands, the award will be determined through drawing.

(f) An awardee of a tract at public sale will be granted a reasonable time in which to pay the purchase price of the lands, the cost of publication, the cost of survey, if any, and the value of the improvements of the former occupant of the lands, if any, and if he is a preference claimant, to submit proof of his ownership in fee simple of lands adjoining the offered tract. Such proof must consist of (1) a certificate of the local recorder of deeds or an authorized abstracter, or (2) an abstract of title or a certificate of title prepared and certified by a title company or by an abstracting company, showing that the claimant owns adjoining land in fee simple at the date of the sale. After a case has been closed, the data filed pursuant to this section may be returned. In the event that the awardee does not submit within the time specified the amounts requested or the proof of ownership, the lands will be awarded under the same conditions to the drawee next in order, if any, or to the next highest bidder, if any.

(g) Lands remaining unsold after offer at public sale, for a period of one year after date of sale, will be available, at the discretion of the authorized officer of the Bureau of Land Management and at not less than the price at which they were appraised for the public sale, for purchase by the first qualified applicant who tenders to the Manager, Santa Fe Land Office, an amount equal to the price specified by the manager, the cost of publication, and if any, the cost of survey and the value of the improvements of the former occupant.

(h) Until a cash certificate has been issued, the authorized officer may at any time determine that the lands should not be sold, and no bidder or applicant for private sale shall have any contractual or other rights as against the United States, and no action taken will create any contractual right or obligation of the United States.

§ 119.10 *Tracts set apart for streets, alleys, or other public purposes.* (a) Subsection 3 (b) of the act provides that upon the filing of an application by an appropriate local governing body within two years after the date of this part, the Secretary of the Interior may relinquish or convey by quit claim deed to such body, without compensation, the surface rights to any tract of the Choctaw-Chickasaw lands which, prior to the transfer of title to the United States, was set apart for streets, alleys, or public purposes, even though not legally dedicated for such purposes.

(b) No particular form of application is required. Applications, however, must be filed, in duplicate, and must contain the following:

(1) An accurate description of the lands requested to be conveyed.

(2) A reference to the action by means of which the lands were set apart for streets, alleys, or public purposes.

(3) A statement showing the authority of the applicant to act on behalf of the local governing body.

(c) Every application must be accompanied by a $10 filing fee which will be nonreturnable.

(d) No conveyance will be made under Subsection 3 (b) of the act unless the local governing body pays within the period specified by the Manager of the Land Office at Santa Fe, New Mexico, the cost of the survey of the lands, if any.

§ 119.11 *Reservations in deeds.* Deeds for Choctaw-Chickasaw lands disposed of under the regulations in this Part will contain any provision the authorized officer of the Bureau of Land Management deems necessary in order to protect the rights of the holders of existing interests in the lands, or to permit access to any of the lands in which the Federal Government retains an interest.

§ 119.12 *Contributions and donations of money, services, and property.* (a) Section 6 of the act authorizes the Secretary of the Interior to accept contributions or donations of money, services, and property to further the provisions of the act.

(b) Contributions and donations may be offered to the Manager of the Land Office at Santa Fe, New Mexico.

(c) Amounts of money contributed in excess of their appropriate share of expenses as determined by the authorized officer of the Bureau of Land Management, will be refunded to contributors.

§ 119.13 *Appeals.* An appeal pursuant to the rules of practice, Part 221 of this chapter, may be taken from the decision of any officer of the Bureau of Land Management.

FRED A. SEATON,
Secretary of the Interior.

AUGUST 1, 1956.

[F. R. Doc. 56-6377; Filed, Aug. 7, 1956; 8:46 a. m.]

INT.-DUP. SEC., WASH., D.C. 2258

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER V—SURVEYS AND RESURVEYS

Circular No. 1957

Part 280—Surveys

SURVEYING THE PUBLIC LANDS

AUTHORITY: §§ 280.1 to 280.10 issued under R. S. 2478; 43 U. S. C. 1201.

SOURCE: §§ 280.1 to 280.10 appear at 19 F. R. 9147, Dec. 23, 1954.

§ 280.1 *Cadastral surveying activities under jurisdiction of the Director, Bureau of Land Management.* (a) In the establishment of the Bureau of Land Management by Reorganization Plan No. 3 of 1946, the office of Supervisor of Surveys was abolished and the functions and powers thereof were transferred to the Secretary of the Interior, to be performed by such officers or agencies of the Department as might be designated by the Secretary. Under that authority, the functions and powers formerly exercised by the Supervisor of Surveys were delegated to the Chief Cadastral Engineer, subject to the supervision of the Director, Bureau of Land Management. In the general reorganization and realignment of functions of the Bureau, the office of Chief Cadastral Engineer has been abolished, and the functions of that office have been delegated to the Director.

(b) By this sequence, the cadastral surveying work of the Bureau of Land Management has been placed under the immediate jurisdiction of the Director, subject to the direction and control of the Secretary of the Interior. Certain functions relating to specific phases of the cadastral surveying work have been delegated to the area administrators.

§ 280.2 *Application for original survey.* Application for the original extension of the rectangular system of public land surveys to include unsurveyed townships should be filed in duplicate with the State Supervisor for the State in which the lands are situated. The application may be in letter form, and should describe the unsurveyed area by township and range of the public surveys, and should set forth the interest of the applicant in the land and the basis of need for extension of the surveys.

§ 280.3 *Application for survey of mining claims.* Application for the survey of a mining claim should be filed with the State Supervisor for the State in which the claim is situated.

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Part 280, Title 43 CFR

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	Each LO	25	Alaska Operations Supervisor		10
	Each DFO	5	Washington Staff Officers		5 each
	Each DGO	5	Asso. Solicitor Sollar		30
	Russellville	10	Miss Williams GS Room 3219		20
	New Orleans	2	Mrs. Jean Wright Room 6126		1
All Regional and Field Solicitors 1 ea.					

§ 280.4 *Mineral surveyors to be appointed by area administrators.* The appointment of mineral surveyors pursuant to section 2334 of the Revised Statutes (30 U. S. C. 39) and § 185.50 of this chapter, will be made by the area administrators; application for such appointment should be made to the appropriate area administrator.

SURVEY OF ISLANDS OR OTHER LANDS OMITTED FROM THE ORIGINAL SURVEY

§ 280.5 *Application for survey of islands or other omitted lands.* Application for the survey of an island or other land omitted from the original survey should be made on Form 4–022a, or its equivalent, and filed in duplicate with the State Supervisor for the State in which the lands are situated.

§ 280.6 *Notice of intended application to be served on State officials and adjacent land owners.* (a) Notice of intention to apply for the survey of an island or other land omitted from the original survey must be served on the adjacent land owners, and the Attorney General and the Secretary of State for the State in which the land is situated, at least 30 days prior to the date of application for survey. Service may be had by registered mail or in person, evidence of which may consist of the registry return receipt or signed acknowledgment of service. A copy of each notice, with proof of service thereof, must be filed with the application. Failure to obtain evidence of service may be explained.

(b) No particular form of notice is prescribed. The notice must make it clear, however, that the land covered by the application is contended to be public land of the United States and subject to survey and administration as such, and that any protest against the proposed survey should be filed with the appropriate State Supervisor. It must be shown what particular surveyed lands opposite the island, or adjoining the unsurveyed land, are owned by the adjacent land owner on whom the notice is served.

§ 280.7 *Evidence required as to character of land and its existence at time of original survey.* An application for the survey of an island or other land omitted from the original survey must be accompanied by evidence showing that the land was in existence and above ordinary high-water elevation when the State was admitted into the Union, and when the adjacent lands were surveyed. Such evidence should consist of statements from at least two persons familiar with the land, as to its size, elevation, and appearance, and the species, size, and age of the timber growth thereon, or nature of other vegetation.[1]

§ 280.8 *Diagram required with application.* A diagram showing the approximate configuration of the island or other land applied for, and its location with reference, to the public land surveys, must accompany the application.

§ 280.9 *Cost of survey borne by Government.* In the event of approval of the application, the costs of the survey will be borne by the Government.

§ 280.10 *No preference right gained by filing of application for survey.* Should the island or other land be surveyed as public land, no preference right to acquire the same under the laws governing the disposal of public lands will be gained by the filing of the application for survey.

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[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statements as to any matter within its jurisdiction.

(This Circular replaces Circular No. 1706.)

INT.-DUP. SEC., WASH., D.C. 2438

GPO 841-748

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1958]

PART 193—COAL PERMITS, LEASES AND LICENSES

MISCELLANEOUS AMENDMENTS

Sections 193.9 and 193.14 are revised; §§ 193.10 and 193.17 are amended; the present text of § 193.24 is designated as paragraph (a) and a new paragraph (b) added thereto; and paragraph (c) of § 193.25 is amended and new paragraphs (d) and (e) added thereto, as follows:

1. Section 193.9 is revised to read:

§ 193.9 *Lease bond.* A compliance bond, in no event less than $1,000, with approved corporate surety (Form 4–1113), or the lessee's personal bond in similar amount (Form 4–1114), will be required prior to the issuance of a lease. Personal bonds must be accompanied by negotiable Federal securities in the amount of the bond. If the amount of the bond is fixed at $1,000, the lessee may, instead, furnish a bond on Form 4–1113 with two qualified individual sureties, as provided in § 191.13 of this subchapter. The right is reserved at any time before or after issuance of the lease to require an increase of the amount of the bond, whether a corporate, personal or individual surety bond, in any case where the Bureau of Land Management deems it proper to do so.

2. Section 193.10 is amended to read:

§ 193.10 *Minimum production.* Leases shall be conditioned upon the payment of a royalty on a minimum annual production beginning with the sixth year of the lease, except when operation is interrupted by strikes, the elements, or casualties not attributable to the lessee, unless, on application and showing made, operations shall be suspended when market conditions are such that the lease cannot be operated except at a loss or for the other reasons specified in section 39 of the act.[1] Operations under the lease shall be continuous except in the circumstances described or unless the lessee shall pay a royalty, less rent, on the minimum production for one year in advance, in which case operations may be suspended for that year.

[1] See showing required under § 191.26 of this subchapter.

3. Section 193.14 is revised to read:

§ 193.14 *Sale; bidding requirements, action by successful bidder.* (a) When the sale is by public auction, before bidding is commenced by those persons present, the Manager or other officer conducting the sale will open and read to those persons the sealed bids received on or before the time set in the notice of lease offer. The successful bidder at a sale by public auction must on the day of sale deposit with the Manager or other officer conducting the sale and each bidder at a sale by sealed bid must submit with his bid, the following: Certified check, cashier's check, bank draft, money order or cash for one-fifth of the amount of the bid by him, and a statement over the bidder's own signature with respect to citizenship and interests held, similar to that prescribed in § 193.11 (a) (2) and (3).

(b) Upon receipt of the high bid at, and at the close of, an oral auction, or the opening of the sealed bids, the authorized officer, subject to his right to reject any and all bids, will award the lease to the successful bidder, who will be notified accordingly. If the land is surveyed, four lease forms will be sent to the successful bidder, who will be required within 30 days from receipt thereof to execute them, pay the balance of the bonus bid, the first year's rental, and the cost of publication of the notice of lease offer as specified in § 193.13, and file a bond as required by § 193.9. The lease will be dated as of the first day of the month following its issuance unless the successful bidder requests that it be dated as of the first day of the month of issuance. If the land is unsurveyed, the successful bidder will not be required to comply with the requirements of this subsection until the land has been surveyed and the plat of such survey accepted and officially filed. Such survey will be at the expense of the Government. If the bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under the Mineral Leasing Act. If the lease awarded to the

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successful bidder, is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease. If the bidder dies before the lease is issued, there must be furnished satisfactory evidence, such as specified in § 193.24 (b), in order that the Manager of the appropriate land office may determine to whom the lease may be issued.

4. Section 193.17 is amended to read:

§ 193.17 *Relinquishment of lease.* Upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease or any legal subdivision thereof. A relinquishment must be filed in duplicate in the appropriate land office. Upon its acceptance it shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to provide for the preservation of any mines or productive works or permanent improvements on the leased lands in accordance with the regulations and terms of the lease.

5. The present text of § 193.24 is designated paragraph (a) and a new paragraph (b) added, as follows:

§ 193.24 *Reward for discovery.* (a) * * *

(b) If the permittee dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed; if probate has been completed, or is not required, to the heirs or devisees; and if there are minor heirs or devisees, to their legal guardian or trustee in his name, provided there is filed in all cases the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person, who as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign such forms.

(ii) Evidence that the heirs or devisees are the heirs or devisees of the deceased permittees and are the only heirs or devisees of the deceased.

(iii) A statement over the signature of each heir or devisee concerning citizenship and holdings similar to that required by § 193.11 (a) (2) and (3).

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the permittees and citing the provisions of the law of the deceased's last domicile showing no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to citizenship and holdings similar to that required by § 193.11 (a) (2) and (3), except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

(3) Where there is a legal guardian or trustee:

(i) A certified copy of the court order authorizing the guardian or trustee to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; statements by the guardian or trustee as to the citizenship and holdings of each of the minors and as to his own citizenship and holdings, including his holdings for the benefit of other minors similar to that required by § 193.11 (a) (2) and (3).

6. Paragraph (c) of § 193.25 is amended and new paragraphs (d) and (e) added, as follows:

§ 193.25 *Transfers, including subleases.*

* * * * *

(c) An application for approval of any instrument transferring a lease or permit, or interest therein, must be accompanied by a service fee of $10. An application not accompanied by such a fee will not be accepted. The fee will not be returned even though the application is later withdrawn or rejected.

(d) No transfer will be approved if the transferee is not qualified to take and hold a permit or lease or if his bond is insufficient. A minor, except a minor heir or devisee of a permittee or lessee, is not qualified to hold a permit or lease and a transfer to a minor will not be approved.

(e) In order for the heirs or devisees of a deceased holder of a permit or lease, an operating agreement, or a royalty interest in a permit or lease, to be recognized by the Secretary as the holder of the permit or lease, agreement or interest, there must be furnished the appropriate showing required under § 193.24 (b).

FRED G. AANDAHL,
Acting Secretary of the Interior.

AUGUST 24, 1956.

[F. R. Doc. 56-6963; Filed, Aug. 29, 1956; 8:45 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1966]

PART 195—SODIUM PERMITS AND LEASES; USE PERMITS

MISCELLANEOUS AMENDMENTS

1. Section 195.12 [illegible] by adding [illegible] new paragraph [illegible] as follows:

§ 195.12 *Nature* [illegible] * * *

(c) If the [illegible] the [illegible] period, the [illegible] to the executor or [illegible] if the estate is probated [illegible] not been completed [illegible] been [illegible], or [illegible] of minors; and [illegible] heirs or devisees, [illegible] or trustee in his [illegible] is filed in all cases [illegible] information:

(1) Where [illegible] has not been completed:

(i) Evidence [illegible] who as executor or [illegible] forms of lease and [illegible] to act in that [illegible] forms.

(ii) Evidence [illegible] of devisees are the [illegible] of the deceased [illegible] only heirs or devisees [illegible].

(iii) A [illegible] signature of each [illegible] citizenship and [illegible] that required by [illegible].

(2) Where [illegible] administrator [illegible] no probate [illegible]:

(i) A [illegible] will or decree [illegible] and if not, a [illegible] that they are the [illegible] permitted and [illegible] of the law of the [illegible] showing no pre-[illegible].

(ii) [illegible] over the signature of each [illegible] devisees with [illegible] and holdings similar to [illegible] § 195.4 (c) (1) and [illegible] the heir or devisee is [illegible] must be over the signature of the guardian or trustee.

(3) Where there is a legal guardian or trustee:

(i) A certified copy of the court order authorizing the guardian or trustee to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; statements by the guardian or trustee as to the citizenship and holdings of each of the minors and as to his own citizenship and holdings including his holdings for the benefit of other minors similar to that required by § 195.4 (c) (1) and (ii).

2. Section 195.19 is amended, as follows:

§ 195.19 *Bid deposits.* The successful bidder at a sale by public auction must deposit with the Manager of the Land Office, or the officer conducting the sale, on the date of the sale, and each bidder at a sale by sealed bids must submit with his bid the following: Certified check, cashier's check, bank draft, money order or cash for one-fifth of the amount of [illegible] by him, and a statement over the bidder's own signature with respect to citizenship and interests held similar to those prescribed in § 195.4.

3. Section 195.20 is amended, as follows:

§ 195.20 *Award of lease.* Upon receipt of the high bid at, and at the close of, an oral auction, or the opening of the sealed bids, the Manager, subject to his right to reject any and all bids, will award the lease to the successful bidder, who will be notified accordingly. Four copies of the lease will be sent to the successful bidder, who will be required within 30 days from receipt thereof to execute them, pay the balance of the bonus bid, the first year's rental, and the cost of publication of the notice of lease offer as specified in § 195.18, and file a bond as required by § 195.15. If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under the Mineral Leasing Act of February 25, 1920 (41 Stat. 437), as amended. If the lease awarded to the successful bidder is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease. If the bidder dies before the lease is issued, evidence such as specified in § 195.12 (c) must be filed before it can be determined to whom the lease may be issued.

4. Section 195.24 is amended by adding thereto new paragraphs (c) and (d), as follows:

§ 195.24 *Transfers, including assignments.* * * *

(c) No transfer will be approved if the transferee is not qualified to take and hold a permit or lease or if his bond is insufficient. A minor, except a minor heir or devisee of a permittee or lessee, is not qualified to hold a permit or lease and a transfer to a minor will not be approved.

(d) In order for the heirs or devisees of a deceased holder of a permit or lease, an operating agreement, or a royalty interest in a permit or lease, to be recognized by the Secretary as the holders of the permit or lease, agreement or interest, there must be furnished the appropriate showing required under § 195.12 (c).

(Sec. 32, 41 Stat. 450; 30 U.S.C. 189. Interpret or apply secs. 23-25, 41 Stat. 447, as amended; 30 U.S.C. 261-263)

Fred G. Aandahl,
Acting Secretary of the Interior.

September 17, 1956.

[F. R. Doc. 56-[illegible]; Filed, Sept. 20, 1956; [illegible]]

Published in 21 F.R., September 21, 1956

Circular Distribution List

[illegible]

successful bidder, is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease. If the bidder dies before the lease is issued, there must be furnished satisfactory evidence such as specified in § 192.24 (b), in order that the Manager of the appropriate land office may determine to whom the lease may be issued.

4. Section 192.17 is amended to read:

§ 192.17 Relinquishment of lease. Upon a satisfactory showing that the public interest will not be impaired, the lessee may [illegible] or any legal subdivision [illegible] in the appropriate land office. [illegible] date it is filed, subject to the continued obligation of the lessee and his surety [illegible] and regulations [illegible] granting of any rights or privileges [illegible] the [illegible] regulations [illegible]

5. The present title of § 192.24 is amended [illegible] paragraph (b) [illegible] as follows:

§ 192.24 Heirs [illegible]

* * *

(b) If the permittee dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed; if probate has been completed, or is not required, to the heirs or devisees, and if there are minor heirs or devisees, to their legal guardian or trustee in his name, provided there is filed in all cases the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person, who as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign such forms.

(ii) Evidence that the heirs or devisees are the heirs or devisees of the deceased [illegible] and are the only heirs or devisees of the deceased.

(iii) A statement over the signature of each heir or devisee concerning citizenship and holdings similar to that required by § 192.11 (a), (b), and (c).

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified [illegible] of the [illegible] a statement [illegible] they are [illegible] and citing the [illegible] the deceased's [illegible] probate [illegible]

(ii) A statement [illegible] each of the heirs [illegible] with reference to citizenship [illegible] to that required by § 192.11 [illegible] (c), except that if [illegible] minor, the statement [illegible] guardian of the [illegible]

(3) Where there is a minor [illegible] devisee:

(i) A certified copy of the [illegible] the guardian [illegible] [illegible] by [illegible] holdings [illegible] as to his own [illegible] holdings, including his [illegible] benefit of other minors [illegible] required by § 192.11 and [illegible]

6. Paragraph (c) of § 192.28 is amended [illegible] new paragraphs [illegible] are added as follows:

§ 192.28 Transfers, [illegible] leases.

* * * * *

(c) An application for approval of [illegible] transferring a lease [illegible] part [illegible] must be accompanied [illegible] fee of $10. An application not accompanied by such a fee will not be accepted. This fee will not be returned even though the application is later withdrawn or rejected.

(d) No transfer will be approved if the transferee is not qualified to take and hold a permit or lease or if his bond is insufficient. [illegible]

[illegible]

FRED G. AANDAHL,
Assistant Secretary of the Interior.

[illegible], 1955.

[F. R. Doc. [illegible]; Filed, [illegible]]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1959]

PART 195—SODIUM PERMITS AND LEASES: USE PERMITS

MISCELLANEOUS AMENDMENTS

1. Section 195.12 is amended by adding thereto new paragraph (c), as follows:

§ 195.12 *Reward for discovery.* * * *

(c) If the permittee dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed; if probate has been completed, or is not required, to the heirs or devisees; and if there are minor heirs or devisees, to their legal guardian or trustee in his name, provided there is filed in all cases the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person, who as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign such forms.

(ii) Evidence that the heirs or devisees are the heirs or devisees of the deceased permittee and are the only heirs or devisees of the deceased.

(iii) A statement over the signature of each heir or devisee concerning citizenship and holdings similar to that required by § 195.4 (c) (1) and (4).

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the permittee and citing the provisions of the law of the deceased's last domicile showing no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to citizenship and holdings similar to that required by § 195.4 (c) (1) and (4), except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

(3) Where there is a legal guardian or trustee:

(i) A certified copy of the court order authorizing the guardian or trustee to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; statements by the guardian or trustee as to the citizenship and holdings of each of the minors and as to his own citizenship and holdings, including his holdings for the benefit of other minors similar to that required by § 195.4 (c) (1) and (4).

2. Section 195.19 is amended, as follows:

§ 195.19 *Bid deposits.* The successful bidder at a sale by public auction must deposit with the Manager of the Land Office, or the officer conducting the sale, on the date of the sale, and each bidder at a sale by sealed bids must submit with his bid the following: Certified check, cashier's check, bank draft, money order or cash for one-fifth of the amount of the bid by him, and a statement over the bidder's own signature with respect to citizenship and interests held similar to that prescribed in § 195.4.

3. Section 195.20 is amended, as follows:

§ 195.20 *Award of lease.* Upon receipt of the high bid at, and at the close of, an oral auction, or the opening of the sealed bids, the Manager, subject to his right to reject any and all bids, will award the lease to the successful bidder, who will be notified accordingly. Four copies of the lease will be sent to the successful bidder, who will be required within 30 days from receipt thereof to execute them, pay the balance of the bonus bid, the first year's rental, and the cost of publication of the notice of lease offer as specified in § 195.18, and file a bond as required by § 195.15. If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under the Mineral Leasing Act of February 25, 1920 (41 Stat. 437), as amended. If the lease awarded to the successful bidder is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease. If the bidder dies before the lease is issued, evidence such as specified in § 195.12 (c) must be filed before it can be determined to whom the lease may be issued.

4. Section 195.24 is amended by adding thereto new paragraphs (c) and (d), as follows:

§ 195.24 *Transfers, including subleases.* * * *

(c) No transfer will be approved if the transferee is not qualified to take and hold a permit or lease or if his bond is insufficient. A minor, except a minor heir or devisee of a permittee or lessee, is not qualified to hold a permit or lease and a transfer to a minor will not be approved.

(d) In order for the heirs or devisees of a deceased holder of a permit or lease, an operating agreement, or a royalty interest in a permit or lease, to be recognized by the Secretary as the holder of the permit or lease, agreement or interest, there must be furnished the appropriate showing required under § 195.12 (c).

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189. Interpret or apply secs. 23–25, 41 Stat. 447, as amended; 30 U. S. C. 261–263)

FRED G. AANDAHL,
Acting Secretary of the Interior.

SEPTEMBER 17, 1956.

[F. R. Doc. 56–7582; Filed, Sept. 20, 1956; 8:45 a. m.]

Published in 21 F.R., September 21, 1956

Circular Distribution List

INT.-DUP. SEC., WASH., D.C.-601

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1960]

PART 194—POTASSIUM PERMITS AND LEASES

MISCELLANEOUS AMENDMENTS

1. Section 194.13 is amended by adding thereto new paragraph (c) as follows:

§ 194.13 *Reward for discovery.* * * *

(c) If the permittee dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed; if probate has been completed, or is not required, to the heirs or devisees; and if there are minor heirs or devisees, to their legal guardian or trustee in his name, provided there is filed in all cases the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person, who as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign such forms.

(ii) Evidence that the heirs or devisees are the heirs or devisees of the deceased permittee and are the only heirs or devisees of the deceased.

(iii) A statement over the signature of each heir or devisee concerning citizenship and holdings similar to that required by § 194.4 (c) (1) and (4).

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the permittee and citing the provisions of the law of the deceased's last domicile showing no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to citizenship and holdings similar to that required by § 194.4 (c) (1) and (4), except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

(3) Where there is a legal guardian or trustee:

(i) A certified copy of the court order authorizing the guardian or trustee to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; statements by the guardian or trustee as to the citizenship and holdings of each of the minors and as to his own citizenship and holdings, including his holdings for the benefit of other minors similar to that required by § 194.4 (c) (1) and (4).

2. Section 194.19 is amended, as follows:

§ 194.19 *Bid deposits.* The successful bidder at a sale by public auction must on the date of sale deposit with the Manager of the Land Office, or other officer conducting the sale, and each bidder at a sale by sealed bids must submit with his bid the following: Certified check, cashier's check, bank draft, money order or cash for one-fifth of the amount of the bid by him, and a statement over the bidder's own signature with respect to citizenship and interests held similar to that prescribed in § 194.4.

3. Section 194.20 is amended, as follows:

§ 194.20 *Award of lease.* Upon receipt of the high bid at, and at the close of, an oral auction, or the opening of the sealed bids, the Manager, subject to his right to reject any and all bids, will award the lease to the successful bidder, who will be notified accordingly. Four copies of the lease will be sent to the successful bidder, who will be required within 30 days from receipt thereof to execute them, pay the balance of the bonus bid, the first year's rental, and the cost of publication of the notice of lease offer as specified in § 194.18, and file a bond as required by § 194.15. If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under the Mineral Leasing Act of February 25, 1920 (41 Stat. 437), as amended. If the lease awarded to the successful bidder is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease. If the bidder dies before the lease is issued, evidence such as specified in § 194.13 (c) must be filed before it can be determined to whom the lease may be issued.

4. Section 194.24 is amended by adding thereto new paragraphs (c) and (d), as follows:

§ 194.24 *Transfers, including subleases.* * * *

(c) No transfer will be approved if the transferee is not qualified to take and hold a permit or lease or if his bond is insufficient. A minor, except a minor heir or devisee of a permittee or lessee, is not qualified to hold a permit or lease and a transfer to a minor will not be approved.

(d) In order for the heirs or devisees of a deceased holder of a permit or lease, an operating agreement, or a royalty interest in a permit or lease, to be recognized by the Secretary as the holder of the permit or lease, agreement or interest, there must be furnished the appropriate showing required under § 194.13 (c).

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189. Interpret or apply secs. 1–7, 44 Stat. 1057, 1058, as amended, 47 Stat. 151; 30 U. S. C. 281–287)

CLARENCE A. DAVIS,
Acting Secretary of the Interior.

SEPTEMBER 24, 1956.

[F. R. Doc. 56–7811; Filed, Sept. 27, 1956; 8:46 a. m.]

Published in 21 F.R., September 28, 1956

Circular Distribution List

Repl. by C-2149

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter L—Mineral Lands

[Circular No. 1961]

PART 185—GENERAL MINING REGULATIONS

RIGHTS ACQUIRED BY LOCATION PURSUANT TO ACT OF JULY 23, 1955

Part 185 is amended by adding thereto the following:

RIGHTS ACQUIRED BY LOCATION PURSUANT TO ACT OF JULY 23, 1955

AUTHORITY: §§ 185.120 to 185.137 issued under sec. 1, 61 Stat. 681, as amended; 30 U. S. C. 601.

§ 185.120 *Purpose and authority.* The act of July 23, 1955 (69 Stat. 367, 30 U. S. C. sec. 601), was enacted "to amend the act of July 31, 1947 (61 Stat. 681) and the mining laws to provide for multiple use of the surface of the same tracts of the public lands, and for other purposes." The regulations in this part are intended to implement only sections 3 to 7, inclusive, of said act hereinafter more fully identified.[1] The word "act" when used in §§ 185.120 to 185.137, inclusive, refers to the act of July 23, 1955.

§ 185.121 *Common varieties: defined.* (a) The act in section 3 provides:

A deposit of common varieties of sand, stone, gravel, pumice, pumicite, or cinders shall not be deemed a valuable mineral deposit within the meaning of the mining laws of the United States so as to give effective validity to any mining claim hereafter located under such mining laws: *Provided, however,* That nothing herein shall affect the validity of any mining location based upon discovery of some other mineral occurring in or in association with such a deposit. "Common varieties" as used in this act does not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value and does not include so-called "block pumice" which occurs in nature in pieces having one dimension of two inches or more.

(b) "Common varieties" as defined by decision of the Department and of the courts include deposits which, although they may have value for use in trade, manufacture, the sciences, or in the mechanical or ornamental arts do not possess a distinct, special economic value for such use over and above the normal uses of the general run of such deposits. Section 3[2] of the law has no application where the mineral for which a location is made is carried in or borne by one of such common varieties.

§ 185.122 *Restriction on use of unpatented mining claims.* (a) The act in section 4 provides:

Any mining claim hereafter located under the mining laws of the United States shall not be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto.

Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States). Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees, and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land: *Provided, however,* That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto: *Provided, further,* That if at any time the locator requires more timber for his mining operations than is available to him from the claim after disposition of timber therefrom by the United States, subsequent to the location of the claim, he shall be entitled, free of charge, to be supplied with timber for such requirements from the nearest timber administered by the disposing agency which is ready for harvesting under the rules and regulations of that agency and which is substantially equivalent in kind and quantity to the timber estimated by the disposing agency to have been disposed of from the claim: *Provided, further,* That nothing in this act shall be construed as affecting or intended to affect or in any way interfere with or modify the laws of the States which lie wholly or in part westward of the ninety-eighth meridian relating to the ownership, control, appropriation, use, and distribution of ground or surface waters within any unpatented mining claim.

Except to the extent required for the mining claimant's prospecting, mining or processing operations and uses reasonably incident thereto, or for the construction of buildings or structures in connection therewith, or to provide clearance for such operations or uses, or to the extent authorized by the United States, no claimant of any mining claim hereafter located under the mining laws of the United States shall, prior to issuance of patent therefor, sever, remove, or use any vegetative or other surface resources thereof which are subject to management or disposition by the United States under the preceding subsection (b). Any severance or removal of timber which is permitted under the exceptions of the preceding sentence, other than severance or removal to provide clearance, shall be in accordance with sound principles of forest management.

(b) The locator of an unpatented mining claim subject to the act is limited in his use of the claim to those uses specified in the act, namely prospecting, mining, or processing operations and uses reasonably incident thereto. He is forbidden to use it for any other purpose such, for example, as for filling stations, curio shops, cafes, tourist, or fishing and hunting camps. Except as such interference may result from uses permitted under the act, the locator of an unpatented mining claim subject to the act may not interfere with the right of the United States to manage the vegetative and other surface resources of the land, or use it so as to block access to or egress from adjacent public land, or use Federal timber for purposes other than those permitted under the act,[3] or block access to water needed in grazing use of the national forests or other public lands, or block access to recreational areas, or prevent agents of the Federal Government from crossing the locator's claim in order to reach adjacent land for purposes of managing wild-game habitat

[1] Sections 1 and 2 thereof relate specifically to the Materials Act of July 31, 1947, and will be implemented by the amendments of Part 259.

[2] Thus, while marble would not be a common variety of stone, ordinary building stone or sand and gravel or pumice or limestone used in building would be.

[3] For regulations relating to the disposition of materials on land administered by the Department of Agriculture see appropriate regulations of that Department. (See 36 CFR 251.4.)

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or improving fishing streams so as to thwart the public harvest and proper management of fish and game resources on the public lands generally, both on located and on adjacent lands.

(c) Mining claims located prior to the date of the act will be subject to the act where determination has been made pursuant to section 5 of the act, that the locator's surface rights are limited as provided in section 4 of the act, or where the owners have waived and relinquished all rights under section 6 of the act, which are contrary to or in conflict with the limitations and restrictions specified as to hereafter located unpatented mining claims in section 4 of the act. See § 185.137 as to effect on existing rights.

(d) On mining claims subject to the provisions of the act, timber may be used by the claimants only for the purposes permitted under the act, and, except where timber is removed to provide clearance for operations or uses permitted under the act, such timber must be cut in accordance with sound principles of forest management. When timber on a mining claim is disposed of by the Government subsequent to the location of the claim, free use of timber by the mining claimant of like kind and quantity from the nearest timber administered by the disposing agency is provided for, but only when and to the extent that is required for their mining operations and only in kind and quantity substantially equivalent to the timber removed from the claim by the Government. Any such timber may be cut and removed only under the rules and regulations of the administering agency. Regulations governing applications and issuance of permits for the use of such timber on public lands administered by the Bureau of Land Management are contained in Part 259 of this chapter.

§ 185.123 *Request for publication of notice to mining claimant.* (a) The act in the first paragraph of section 5 (a) provides as follows:

The head of a Federal department or agency which has the responsibility for administering surface resources of any lands belonging to the United States may file as to such lands in the office of the Secretary of the Interior, or in such office as the Secretary of the Interior may designate, a request for publication of notice to mining claimants, for determination of surface rights, which request shall contain a description of the lands covered thereby, showing the section or sections of the public land surveys which embrace the lands covered by such request, or if such lands are unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument.

The "request for publication of notice to mining claimants" authorized to be filed by the above-quoted portion of the act can be filed by the Federal department or agency which has the responsibility for administering surface resources of the lands to which the requested notice would relate. It must describe the land covered by the request by section, township, range, and meridian or, if the land is unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands, or by a metes and bounds description of such area with a tie to a United States mineral monument.

(b) A request for publication of notice under this subsection shall be filed with the land office of the Bureau of Land Management for the land district in which the lands are situated.[4] No request for publication may include lands in more than one land district.

§ 185.124 *Evidence necessary to support a request for publication.* (a) The second and third paragraphs of section 5 (a) of the act provide in detail for the filing by the head of a Federal department or agency of certain evidence in support of the request for publication of the notice referred to in § 185.123, as follows:

The filing of such request for publication shall be accompanied by an affidavit or affidavits of a person or persons over twenty-one years of age setting forth that the affiant or affiants have examined the lands involved in a reasonable effort to ascertain whether any person or persons were in actual possession of or engaged in the working of such lands or any part thereof, and, if no person or persons were found to be in actual possession of or engaged in the working of said lands or any part thereof, on the date of such examination, setting forth such fact, or, if any person or persons were so found to be in actual possession or engaged in such working on the date of such examination, setting forth the name and address of each such person, unless affiant shall have been unable through reasonable inquiry to obtain information as to the name and address of any such person, in which event the affidavit shall set forth fully the nature and results of such inquiry.

The filing of such request for publication shall also be accompanied by the certificate of a title or abstract company, or of a title abstractor, or of an attorney, based upon such company's abstractor's, or attorney's examination of those instruments which are shown by the tract indexes in the county office of record as affecting the lands described in said request, setting forth the name of any person disclosed by said instruments to have an interest in said lands under any unpatented mining claim heretofore located, together with the address of such person if such address is disclosed by such instruments of record. "Tract indexes" as used herein shall mean those indexes, if any, as to surveyed lands identifying instruments as affecting a particular legal subdivision of the public land surveys, and as to unsurveyed lands identifying instruments as affecting a particular probable legal subdivision according to a projected extension of the public land surveys.

(b) This part of the act requires the filing of an affidavit which may be made by any person or persons over twenty-one years of age who have examined the lands. It must show whether any person or persons were "in actual possession of or engaged in the working of such lands (the lands described in the request for publication of notice) or any part thereof" and, if they were, the name and address of each such person must be given if it can be learned by reasonable inquiry and if it cannot be so learned, the affidavit must show in detail what inquiry or inquiries were made to obtain each such name and address. No definition of the terms "in actual possession" or "engaged in the working of said lands" will be attempted here, but the affidavits should recite what evidences of occupancy or workings were found. The request for publication must also be accompanied by a certificate executed as provided in the third paragraph of section 5 (a) and containing the information required by that paragraph to be furnished. If there are no tract indexes, as defined in the act, in the county office of record affecting the lands described in the request for publication, a certificate executed as provided in the said third paragraph of section 5 (a) to that effect must be furnished. A form of certificate which may be used at the option of the requesting department or agency is appended to the regulations in this part as Form No. 1.[5] [6]

§ 185.125 *Publication of notice.* If the request for publication and the accompanying papers conform to the requirements of the act, the Manager or the Director, as may be appropriate, at the expense of the requesting department or agency, shall cause notice to mining claimants to be published in a newspaper having general circulation in the county in which the lands involved are situated. If the notice is published in a daily newspaper it shall be published in the Wednesday issue for nine consecutive weeks, if in a weekly paper, in nine consecutive issues, or if in a semi-weekly or tri-weekly paper, in the issue of the same day of each week for nine consecutive weeks.

§ 185.126 *Contents of published notice.* (a) Section 5 (a) of the act specifies in detail what the published notice shall contain, as follows:

Such notice shall describe the lands covered by such request, as provided heretofore, and shall notify whomever it may concern that if any person claiming or asserting under, or by virtue of, any unpatented mining claim heretofore located, rights as to such lands or any part thereof, shall fail to file in the office where such request for publication was filed (which office shall be specified in such notice) and within one hundred and fifty days from the date of the first publication of such notice (which date shall be specified in such notice), a verified statement which shall set forth, as to such unpatented mining claim—

(1) The date of location;

(2) The book and page of recordation of the notice or certificate of location;

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[4] The land office for North Dakota and South Dakota is located at Billings, Montana; that for Nebraska at Cheyenne, Wyoming, and that for Arkansas, Florida, Louisiana and Mississippi, at Washington, D. C.

[5] The use of this form is not compulsory.

[6] Filed as part of original document, published in FEDERAL REGISTER issue of July 11, 1956.

(3) The section or sections of the public land surveys which embrace such mining claims; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument;

(4) Whether such claimant is a locator or purchaser under such location; and

(5) The name and address of such claimant and names and adresses so far as known to the claimant of any other person or persons claiming any interest or interests in or under such unpatented mining claim;

such failure shall be conclusively deemed (i) to constitute a waiver and relinquishment by such mining claimant of any right, title or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of this act as to hereafter located unpatented mining claims, and (ii) to constitute a consent by such mining claimant that such mining claim, prior to issuance of patent therefor, shall be subject to the limitations and restrictions specified in section 4 of this act as to hereafter located unpatented mining claims, and (iii) to preclude thereafter, prior to issuance of patent, any assertion by such mining claimant of any right or title to or interest in or under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of this act as to hereafter located unpatented mining claims.

(b) The notice should conform to Form #2 appended to the regulations in this part.[5 6]

§ 185.127 *Service of notice.* The last paragraph of section 5 (a) of the act provides with respect to service of the notice by personal delivery or by registered mail, as follows:

Within fifteen days after the date of first publication of such notice, the department or agency requesting such publication (1) shall cause a copy of such notice to be personally delivered to or to be mailed by registered mail addressed to each person in possession or engaged in the working of the land whose name and address is shown by an affidavit filed as aforesaid, and to each person who may have filed, as to any lands described in said notice, a request for notices, as provided in subsection (d) of this section 5, and shall cause a copy of such notice to be mailed by registered mail to each person whose name and address is set forth in the title or abstract company's or title abstractor's or attorney's certificate filed as aforesaid, as having an interest in the lands described in said notice under any unpatented mining claim heretofore located, such notice to be directed to such person's address as set forth in such certificate; and (2) shall file in the office where said request for publication was filed an affidavit showing that copies have been so delivered or mailed.

§ 185.128 *Service of copies; failure to comply.* If the department or agency requesting publication under these regulations shall fail to comply with the requirements of section 5 (a) of the act as to the personal delivery or mailing of a copy of the published notice to any person, the publication of such notice shall be deemed wholly ineffectual as to that person or as to the rights asserted by that person and the failure of that person to file a verified statement, as provided in such notice shall in no manner affect, diminish, prejudice or bar any rights of that person.

§ 185.129 *Proof of publication.* After the period of newspaper publication has expired, the department or agency requesting the publication shall obtain from the office of the newspaper or publication a sworn statement that the notice was published at the time and in accordance with the requirements under the regulations of this part, and shall file such sworn statement in the office where the Request for Publication was filed.

§ 185.130 *Failure of claimant to file verified statement.* If any claimant under any unpatented mining claim located prior to July 23, 1955, which embraces any of the lands described in any notice published in accordance with the regulations in this part shall fail to file a verified statement, as specified in such published notice (see § 185.125), within one hundred and fifty days from the date of the first publicaton of such notice, such failure shall be conclusively deemed except as otherwise provided in § 185.128:

(a) To constitute a waiver and relinquishment by such mining claimant of any right, title or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of the act as to unpatented mining claims located after its enactment.

(b) To constitute a consent by such mining claimant that such mining claim, prior to issuance of patent therefor, be subject to the limitations and restrictions specified in section 4 of the act as to unpatented mining claims located after its enactment.

(c) To preclude thereafter prior to the issuance of patent any assertion by such mining claimant of any right or title to or interest in or under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of the act as to unpatented mining claims located after its enactment. A verified statement under this section may follow Form No. 3 appended to the regulations of this part.[5 6]

§ 185.131 *Hearing; time and place.* If any verified statement shall be filed by a mining claimant as provided under § 185.11, then the Examiner or the Director, as may be appropriate, shall fix a time and place for a hearing to determine the validity and effectiveness of any right or title to or interest in or under such mining claim which the mining claimant may assert contrary to or in conflict with the limitations or restrictions specified in section 4 of the act as to unpatented mining claims located after its enactment. The Examiner shall notify the department or agency and all mining claimants entitled to notice as the result of the filing of such verified statement of the time and place of such hearing at least 30 days in advance thereof. The notice of hearing shall contain a statement specifying the issues upon which evidence will be submitted at the hearing. Such hearing shall be held in the county where the lands in question, or parts thereof, are located unless the mining claimant agrees otherwise.

§ 185.132 *Stipulation between parties.* Where verified statements are filed asserting rights to an aggregate of more than twenty mining claims, any single hearing shall be limited to a maximum of twenty mining claims unless the parties affected shall otherwise stipulate and as many separate hearings shall be set as shall be necessary to comply with section 5 (c) of the act. If at any time prior to a hearing the department or agency requesting publication of notice and any person filing a verified statement pursuant to such notice shall so stipulate, then to the extent so stipulated, but only to such extent, no hearing shall be held with respect to rights asserted under that verified statement, and to the extent defined by the stipulation the rights asserted under that verified statement shall be deemed to be unaffected by the notice published pursuant to that request.

§ 185.133 *Hearing; procedures.* The procedures with respect to notice of such a hearing and the conduct thereof, and in respect to appeals, shall follow the rules of practice of the Department of the Interior and the Bureau of Land Management (Part 221 of this title) relating to contests or protests affecting public lands of the United States so far as they are applicable.

§ 185.134 *Effect of decision affirming a mining claimant's rights.* (a) If the final decision rendered in any hearing held pursuant to section 5 of the act shall affirm the validity and effectiveness of any mining claimant's right or interest under a mining claim asserted in accordance with the provisions of that section, then no subsequent proceedings under section 5 of the act shall have any force or effect upon the so-affirmed right or interest of such mining claimant under such mining claim.

(b) If it is finally determined as the result of such a hearing that the claimant has no right or title to or interest in or under his mining claim which he may assert contrary to or in conflict with the limitations and restrictions specified in section 4 of the act, then those limitations and restrictions shall apply with respect to such mining claim.

§ 185.135 *Recording by mining claimant of request for copy of notice.* (a) Section 5 (d) of the act provides as follows:

Any person claiming any right under or by virtue of any unpatented mining claim heretofore located and desiring to receive a copy of any notice to mining claimants which may be published as above provided in subsection (a) of this section 5, and which may affect lands embraced in such mining claim, may cause to be filed for record in the county office of record where the notice of certificate of location of such mining

[5] The use of this form is not compulsory.

[6] Filed as part of original document; published in FEDERAL REGISTER issue of July 11, 1956.

claim shall have been recorded, a duly acknowledged request for a copy of any such notice. Such request for copies shall set forth the name and address of the person requesting copies, and shall also set forth, as to each heretofore located unpatented mining claim under which such person asserts rights—

(1) The date of location;

(2) The book and page of the recordation of the notice or certificate of location; and

(3) The section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument. Other than in respect to the requirements of subsection (a) of this section 5 as to personal delivery or mailing of copies of notices and in respect to the provisions of subsection (e) of this section 5, no such request for copies of published notices and no statement or allegation in such request and no recordation thereof shall affect title to any mining claim or to any land or be deemed to constitute constructive notice to any person that the person requesting copies has, or claims, any right, title, or interest in or under any mining claim referred to in such request.

(b) A request for a copy of notices recorded pursuant to the regulations in this part may follow Form No. 4 appended to the regulations in this part.[5 6]

§ 185.136 *Waiver of rights by mining claimants.* (a) Section 6 of the act provides as follows:

The owner or owners of any unpatented mining claim heretofore located may waive and relinquish all rights thereunder which are contrary to or in conflict with the limitations or restrictions specified in section 4 of this act as to hereafter located unpatented mining claims. The execution and acknowledgment of such a waiver and relinquishment by such owner or owners and the recordation thereof in the office where the notice or certificate of location of such mining claim is of record shall render such mining claim thereafter and prior to issuance of patent subject to the limitations and restrictions in section 4 of this act in all respects as if said mining claim had been located after enactment of this act, but no such waiver or relinquishment shall be deemed in any manner to constitute any concession as to the date of priority of rights under said mining claim or as to the validity thereof.

(b) A waiver under this section may follow Form 5 appended to the regulations in this part.[5 6]

§ 185.137 *Protection of existing rights; exclusion of reservation in patents.* The act in section 7 provides as follows:

Nothing in this act shall be construed in any manner to limit or restrict or to authorize the limitation or restriction of any existing rights of any claimant under any valid mining claim heretofore located, except as such rights may be limited or restricted as a result of a proceeding pursuant to section 5 of this act, or as a result of a waiver and relinquishment pursuant to section 6 of this act; and nothing in this act shall be construed in any manner to authorize inclusion in any patent hereafter issued under the mining laws of the United States for any mining claim heretofore or hereafter located, of any reservation, limitation, or restriction not otherwise authorized by law, or to limit or repeal any existing authority to include any reservation, limitation, or restriction in any such patent, or to limit or restrict any use of the lands covered by any patented or unpatented mining claim by the United States, its lessees, permittees, and licensees which is otherwise authorized by law.

This section makes it clear that all of the rights of mining claimants existing on the date of the act are preserved and will continue unless:

(a) Claimant fails subject, however, to the provisions of § 185.128 hereof, to file a verified statement in response to a published notice as provided in section 5 (b) of the act and § 185.130; (b) it is determined as a result of a hearing pursuant to section 5 (c) that such rights asserted in a verified statement are not valid and effective; (c) the claimant waives and relinquishes his rights pursuant to section 6. It also preserves to all mining claimants the right to a patent unrestricted by anything in the act and provides that no limitation, reservation or restriction may be inserted in any mineral patent unless authorized by law, but it also makes it clear that all laws in force on the date of its enactment which provide for any such reservation, limitation, or restriction in such patents and all authority of law then existing for the use of lands embraced in unpatented mining claims by the United States, its lessees, permittees, and licensees continue in full force and effect.

FRED A. SEATON,
Secretary of the Interior.

SEPTEMBER 28, 1956.

[F. R. Doc. 56-7998; Filed, Oct. 3, 1956; 8:49 a. m.]

Form No. 1
(See 43 CFR 185.124)
Certificate

The undersigned hereby certifies that:

#1. *It, *he, *she is a duly qualified and licensed *Title Company, *Abstract Company, *Title Abstractor.

#1. *He, *she is an attorney admitted to practice law in one or more of the States in the United States of America, or the Territory of Alaska.

2. *It, *he, *she has examined the instruments affecting the hereinafter described lands, of record in the public records of the county in which the lands are situate as shown by the tract indices of the public records in the county office of record for said county; the lands hereinabove referred to being situate in the County of _____, State of _____, and described as follows:

(Describe as described in the Request for Publication, in conformity with requirements of section 5(a) of Act of July 23, 1955 (69 Stat. 367; sec. 43 CFR 185.123).)

3. Based upon the undersigned's said examination of said instruments, there is set forth below the name of each person ** disclosed by said instruments to have an interest in said lands under any unpatented mining claim located prior to the enactment of the Act of July 23, 1955 (69 Stat. 367), together with the address of such person if disclosed by such instruments of record:

_____
(Name of Person)

_____
(Address)
(If so disclosed) (If not disclosed, write "not disclosed")

In witness whereof, this Certificate is executed this ____day of _____, 19___.

(If corporation)

_____
(Corporate name)

By_____
(Designate below signature office of person signing for corporation)

Address _____

(If individual)

_____
(Name)

Address _____

Note: Affix corporate seal if corporation executes.

Form No. 2
(See 43 CFR 185.126)

NOTICE TO MINING CLAIMANTS

Published pursuant to section 5 of the Act of July 23, 1955 (69 Stat. 367).

To whomever it may concern:

Notice is hereby given in pursuance of a proper Request for Publication heretofore filed in accordance with section 5 of the Act of July 23, 1955 (69 Stat. 367), and the regulations thereunder (43 CFR 185.123-185.127).

1. That on _____, _____, whose address is
Date (Name of applicant)
_____, filed in the Land Office of the Bureau of Land Management, Department of the Interior, at _____, a request for publication

of notice to all mineral locators or any person claiming under them involving a mining claim or claims located on lands in the County of _____, State of _____, described as follows, to-wit: Township _____, Range _____, _____Meridian.

(Describe in conformity with requirements of section 5 (a) of the Act of July 23, 1955 (69 Stat. 367; sec. 43 CFR 185.123).)

2. That if any person claiming or asserting under, or by virtue of, any unpatented mining claim located prior to July 23, 1955, any right, title, or interest in the vegetative surface resources and other surface resources, under such mining claim, contrary to or in conflict with the limitations or restrictions specified in section 4 of said act, as to the above-described lands or any part thereof, shall fail to file in the Land Office of the Bureau of Land Management at _____, and within 150 days from the below-stated date of first publication of this Notice, a verified statement which shall set forth as to such mining claim:

(1) The date of location;

(2) The book and page of recordation of the notice or certificate of location;

(3) The section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument;

(4) Whether such claimant is a locator or purchaser under such location; and

(5) The name and address of such claimant and names and addresses so far as known to the claimant of any other person or persons claiming any interest or interests in or under such unpatented mining claim;

such failure shall be conclusively deemed (i) to constitute a waiver and relinquishment by such mining claimant of any right, title, or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of the Act of July 23, 1955 (69 Stat. 367), as to unpatented claims located after that date, and (ii) to constitute a consent by such mining claimant that such unpatented mining claim shall be subject to said limitations and restrictions, and (iii) to preclude thereafter, prior to issuance of patent, any assertion by such mining claimant of any right or title to or interest in or under such mining claim contrary to or in conflict with said limitations or restrictions. Section 4 provides, generally, that unpatented mining claims located after July 23, 1955 shall not be used for purposes other than prospecting, mining, or processing operations, or uses reasonably incident thereto; that such claims will be subject to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof; and that, except to the extent required for mining operations and uses reasonably incident thereto or to provide clearance for such operations or uses, claimants of such claims shall not use or dispose of vegetative or other surface resources thereof; and that, except for clearance for such purposes, any permitted severance or removal of timber must be in accordance with sound principles of forest management. Said Section 4 also provides that any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with the prospecting, mining, processing or reasonably incident uses by the mining claimant.

The date of first publication of this Notice shall be _____, 19___.

Dated:_____

_____
(Manager)

_____
(Land Office, Bureau of Land Management, Department of the Interior)

First publication:_____
(Date)

INT.-DUP. SEC., WASH., D.C.5337

Form No. 3
(43 CFR 185.130)

VERIFIED STATEMENT OF MINING CLAIMANT PURSUANT TO SECTION 5 OF THE ACT OF JULY 23, 1955 (69 STAT. 367)

Pursuant to the provisions of section 5 of the Act of July 23, 1955 (69 Stat. 367), and to the applicable regulations thereunder (43 CFR 185.130) the undersigned respectfully state(s) and represent(s):

1. Under and by virtue of the hereinafter mentioned mining claim(s) located prior to July 23, 1955, the undersigned _____, whose address is _____, claims rights contrary to or in conflict with the limitations or restrictions specified in Section 4 of said Act.

2. Said mining claim(s) is/are situate in the County of _____, State of _____, and is/are identified as follows:

Name of mining claim	Date of Location	Notice or certificate of location recorded	
		Book	Page

#3. Said mining claim(s) is/are embraced in the following section(s) of the public land surveys, namely: Township_____, Range_____, _____ Meridian, Section(s)_____.

##3. Said mining claim(s) will probably be embraced in the following section(s) when the public land surveys are extended to the lands covered by said mining claim(s), namely: Township_____, Range_____, _____Meridian, Section(s) _____,

Note: In lieu of ##3, the mining claim may be described by a tie by courses and distances to an approved United States mineral monument.

4. The undersigned is a locator or purchaser under said mining claim(s) as follows, to-wit:

_____
(Name of Claim)

_____
(Claimant's interest)

(Insert opposite the name of each claim the word "locator" or the word "purchaser", to show the nature of the mining claimant's interest.)

5. The names and addresses, so far as known to the undersigned claimant, of any other person or persons claiming any interest or interests in or under the above-named unpatented mining claim(s) are as follows:

(Set forth the name and address of each other claimant, so far as known to mining claimant filing above statement, and identify which of the above-named mining claim(s) each such other claimant is interested in.)

6. This verified statement of the undersigned mining claimant is being filed in accordance with the provisions of section 5 of said Act and pursuant to a notice to mining claimants within one hundred and fifty (150) days from the first publication of said Notice.

Dated:_____

_____
(Mining Claimant)

Use this paragraph 3 where public land surveys have been extended to the lands on which the mining claim(s) are situated.

Use this paragraph 3 where public land surveys have not been extended to the lands on which the mining claims are situated. Or as an alternative, give as to each mining claim a tie by courses and distances from the location or discovery monument or a specified corner of the mining claim, to an approved United States Mineral Monument identified by its official survey number.

Verification
(Where mining claimant is an individual)

State of_____)
County of_____) ss:

_____, being first duly sworn deposes and says that
(Name of mining claimant)
(s)he is the mining claimant who executed the foregoing Statement of Mining Claimant; that (s)he has read the said foregoing verified statement and knows the contents thereof; and that the same is true of his/her own knowledge.

Subscribed and sworn to before me this_____day of_____, 19___.

_____
(Notary Public in and for the State of
_____, County of_____)

My commission expires:

Verification
(Where mining claimant is a corporation)

State of_____)
County of_____) ss:

_____, being first duly sworn deposes and says that
(s)he is an officer, to-wit,_____, of _____, the
(Name of corporation)
corporation named in and whose name is subscribed to the foregoing Verified Statement of Mining Claimant, and makes this verification for and on behalf of said corporation; that (s)he has read the foregoing Verified Statement of Mining Claimant, and that the same is true of his/her own knowledge.

_____
(Notary Public in and for the State of
_____, County of_____)

My commission expires:

Form No. 4
(43 CFR 185.135)

REQUEST OF MINING CLAIMANT FOR COPY OF NOTICE

Pursuant to the provisions of section 5 of the Act of July 23, 1955 (69 Stat. 367) and to the applicable regulations thereunder (43 CFR 185.135), the undersigned hereby requests a copy of any notice to mining claimants which may be published by the Secretary of the Interior of the United States or his designated representative, as provided in section 5 of said act, affecting any of the lands hereinafter described and in that connection respectfully state(s) and represent(s):

1. Under and by virtue of the hereinafter mentioned mining claim(s) located prior to enactment of the Act of July 23, 1955 (69 Stat. 367), the undersigned _____, whose address is_____, claims
(Name)
rights contrary to or in conflict with the limitations or restrictions specified in section 4 of said act.

2. Said mining claim(s) is/are situate in the County of _____, State of _____, and are identified as follows:

Name of mining claim	Date of Location	Notice or certificate of location recorded	
		Book	Page

3. Said mining claim(s) is/are embraced in the following section(s) of the public land surveys, namely: Township_____, Range_____, _____ Meridian, Sections_____; or

4. Said mining claim(s) will probably be embraced in the following section(s) when the public land surveys are extended to the lands covered by said mining claim(s), namely: Township_____, Range_____, _____Meridian, Section(s) _____.

Note: In lieu of paragraph 4, the mining claim may be described by a tie by courses and distances to an approved United States mineral monument.

5. The undersigned is a locator or purchaser under said mining claim(s) as follows, to-wit:

_____
(Name of claim)

_____
(Claimant's interest)

(Insert opposite the name of each claim the word "locator" or the word "purchaser", to show the nature of the mining claimant's interest.) (Use the word "purchaser" where claimant's interest is other than that of a locator.)

Dated: _____

_____
(Mining Claimant)

(Append proper acknowledgment for individual, or for officer or other authorized representative of corporation, in compliance with the laws of the State where the lands are situated.)

Form No. 5
(43 CFR 185.136)

WAIVER PURSUANT TO SECTION 6 OF THE ACT OF JULY 23, 1955
(69 STAT. 367)

Pursuant to the provisions of section 6 of the Act of July 23, 1955 (69 Stat. 367), the undersigned owner(s) of the herein-below designated interest(s) in the herein-below described unpatented mining claim(s) which were located prior to July 23, 1955, hereby waive(s) and relinquish(es) any and all rights of the undersigned under said mining claim(s) which are contrary to or in conflict with the limitations or restrictions specified in section 4 of said Act of July 23, 1955, as to mining claims located after that date.

The unpatented mining claim(s) covered by this waiver is/are situate in the County of _____, State of _____, and identified as follows:

Name of mining claim	Date of Location	Notice or Certificate Location Recorded	
		Book	Page

The name(s), address(es) and interest(s) of the undersigned in said unpatented mining claim(s) are af follows:

Name	Address	Interest*

Dated: _____ 19___.

SIGNATURE(S)

_____

_____

(Append proper acknowledgment for individual, or for officer or other authorized representative of corporation, in compliance with the laws of the State where the lands are situated.)

*State nature of interest(s), for example - "locator", or if not a locator, "owner", "royalty holder", "optionee", "purchaser", or "lessee".

GPO 9 129 19

Repl. by C-1999

[Circular No. 1962]

UNITED STATES DEPARTMENT OF THE INTERIOR

WASHINGTON

[Reprinted from FEDERAL REGISTER, Thursday, October 4, 1956]

Code of Federal Regulations

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter 1—Bureau of Land Management, Department of the Interior

Subchapter P—Practice

PART 221—APPEALS AND CONTESTS

REVISION OF RULES OF PRACTICE

1. Section 221.2 is amended to read as follows:

§ 221.2 *Appeal; how taken, filing fee, mandatory time limit.* A person who wishes to appeal to the Director must file in the office of the officer who made the decision a notice that he wishes to appeal. Except where an agency of the Federal Government or of a State or territorial government or political subdivision thereof or a municipal corporation is the appellant, the notice of appeal must be accompanied by a filing fee of $5 for each separate application, claim, entry, permit, lease, protest, or similar filing or interest on which the appellant is seeking favorable action. The consolidation of appeals will not relieve each appellant of paying the same filing fee that he would have to pay if he took his appeal separately. The notice of appeal must give the serial number or other identification of the case and must be received in the office where it is required to be filed within 30 days after the person taking the appeal received the decision he is appealing from. No extension of time will be granted for filing this notice. A notice of appeal which is filed late or which is not accompanied by the required filing fee will not be considered and the case will be closed by the officer from whose decision the appeal is taken. The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make.

2. Section 221.18 is amended to read as follows:

§ 221.18 *Copies of transcript.* Each party must pay for any copies of the transcript obtained by him except where the reporter's fees paid enable the Bureau to furnish him with a copy of the transcript without additional cost. Unless a summary of the evidence is stipulated to, the Government will file the original copy of the transcript with the case record.

3. Section 221.32 is amended to read as follows:

§ 221.32 *Appeal; how taken, filing fee, mandatory time limit.* A person who wishes to appeal to the Secretary from a decision of the Director must file in the office of the Director a notice that he wishes to appeal. Except where an agency of the Federal Government or of a State or territorial government or political subdivision thereof or a municipal corporation is the appellant, the notice of appeal must be accompanied by a filing fee of $5 for each separate application, claim, entry, permit, lease, protest, or similar filing or interest on which the appellant is seeking favorable action. The consolidation of appeals will not relieve each appellant of paying the same filing fee that he would have to pay if he took his appeal separately. The notice of appeal must give the serial number or other identification of the case and must be received in the Director's office within 30 days after the person taking the appeal received the decision he is appealing from. No extension of time will be granted for filing this notice. A notice of appeal which is filed late or which is not accompanied by the required filing fee will not be considered and the case will be closed by the Director. The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make.

4. Section 221.53 is amended to read as follows:

§ 221.53 *Initiation of contest.* Any person desiring to initiate a private contest must file a complaint in the land office which has jurisdiction over the land involved, or, if there is no such land office, in the office of the Director, Bureau of Land Management, Washington 25, D. C. The contestant must serve a copy of the complaint on the contestee not later than 15 days after filing the complaint and must file proof of such service, as required by § 221.95, in the office where the complaint was filed within 15 days after service.

5. Section 221.54 is amended by deleting the last sentence of the section which reads as follows: "If the complaint does not meet each of these requirements, it will be summarily dismissed."

6. Section 221.57 is amended by adding the following sentence: "Any complaint which is not accompanied by the required fee and deposit will not be accepted for filing."

7. Section 221.59 is amended to read as follows:

§ 221.59 *Summary dismissal; waiver of defect in service.* If a complaint when filed does not meet all the requirements of §§ 221.54 and 221.56 or if the complaint is not served upon each contestee as required by § 221.58, the complaint will be summarily dismissed by the manager and no answer need be filed. However, where prior to the summary dismissal of a complaint a contestee answers without questioning the service or proof of service of the complaint, any defect in service will be deemed waived.

8. Paragraphs (a) and (d) of § 221.68 are amended to read as follows:

(a) No corroboration shall be required of a Government complaint and the complaint need not be under oath.

* * * * *

(d) The statements required by § 221.54 (e) and (f) need not be included in the complaint.

9. The centerheading following § 221.68 is amended to read as follows: "Proceedings Before the Examiner."

10. Section 221.70 is amended to read as follows:

§ 221.70 *Notice of hearing.* The examiner shall fix a place and date for the hearing and notify all parties and the Bureau at least 30 days in advance of the date set, unless the parties and the Bureau request or consent to an earlier date. The notice shall include (a) the time, place, and nature of the hearing, (b) the legal authority and jurisdiction under which the hearing is to be held, and (c) the matters of fact and law asserted.

11. Section 221.75 is amended to read as follows:

§ 221.75 *Reporter's fees; transcript.* (a) Each party and the Bureau will be required to pay the reporter's fees covering the party's or the Bureau's direct evidence and cross-examination of other witnesses except that

(1) In the case of a private contest, if the ultimate decision is adverse to the contestant, he must in addition pay all the reporter's fees otherwise payable by the contestee.

(2) In the case of a Government contest, if the ultimate decision is adverse to the Government, the Bureau must pay all the reporter's fees otherwise payable by the contestee.

(3) In the case of a Government contest the contestee may be relieved of paying his share of the reporter's fees if he is financially unable to pay his share. In order to secure such relief he must file with the examiner at least 15 days prior to the date set for the hearing a request for such relief, supported by an affidavit setting forth in detail facts showing his financial inability to pay. If the examiner in his discretion determines that the applicant for relief is financially unable to pay his share of the reporter's fees,

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the Bureau will bear the cost of such share.

(b) Except where a party is relieved of paying the reporter's fees pursuant to subparagraph (3) of paragraph (a) of this section, each party shall be required by the examiner to make reasonable deposits for reporter's fees from time to time in advance of taking testimony. Such deposits must be sufficient to cover all reporter's fees for which the party may ultimately be liable under paragraph (a) of this section. Any part of a deposit not used will be returned to the depositor upon the final determination of the case except that deposits which are required to be made when a complaint is filed will not be returned if the party making the deposit does not appear at the hearing, but will be used to pay the reporter's appearance fee, if any, and the remainder will be forfeited to the United States. Reporter's fees will be at the rates established for the local courts, or, if the reporting is done pursuant to a contract, at rates established by the contract.

(c) Each party must pay for any copies of the transcript obtained by him except where the reporter's fees paid enable the Bureau to furnish him with a copy of the transcript without additional cost.

12. Section 221.76 is amended to read as follows:

§ 221.76 *Findings and conclusions; decision by examiner; submission to Director for decision.* (a) At the conclusion of the testimony the parties at the hearing shall be given a reasonable time by the examiner, considering the number and complexity of the issues and the amount of testimony, to submit to the examiner proposed findings of fact and conclusions of law and reasons in support thereof or to stipulate to a waiver of such findings and conclusions.

(b) As promptly as possible after the time allowed for presenting proposed findings and conclusions, the examiner shall make findings of fact and conclusions of law (unless waiver has been stipulated), giving the reasons therefor, upon all the material issues of fact, law, or discretion presented on the record. The examiner may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. He must rule upon each proposed finding and conclusion submitted by the parties and such ruling shall be shown in the record. The examiner will render a written decision in the case which shall become a part of the record and shall include a statement of his findings and conclusions, as well as the reasons or basis therefor, and his rulings upon the findings and conclusions proposed by the parties if such rulings do not appear elsewhere in the record. A copy of the decision will be served upon all parties to the case.

(c) The Director may require, in any designated case, that the examiner make only a recommended decision and that the decision and the record be submitted to the Director for consideration. The recommended decision shall meet all the requirements for a decision set forth in paragraph (b) of this section. The Director shall then make the initial decision in the case. This decision shall include such additional findings and conclusions as do not appear in the recommended decision and the record shall include such rulings on proposed findings and conclusions submitted by the parties as have not been made by the examiner.

13. Section 221.91 is amended by adding the following paragraph:

(d) "Field Commissioner" includes an examiner designated to hold a hearing under Subpart A of this part.

14. Section 221.104 is amended to read as follows:

§ 221.104 *Compulsory attendance of witnesses.* The Field Commissioner or the examiner, as the case may be, is authorized to issue subpoenas directing the attendance of witnesses at hearings to be held before him or at the taking of depositions to be held before himself or other officers. The issuance of subpoenas, service, attendance fees, and similar matters shall be governed by the act of January 31, 1903 (43 U. S. C. 102–106), and 28 U. S. C. 1821. Subpoenas will be issued on Form No. 4–622.

15. Section 221.105 is amended to read as follows:

§ 221.105 *Application for subpoena.* An application for a subpoena may be filed in the office of the Field Commissioner or the examiner before whom the hearing is to be held, in the office of the officer who made the decision appealed from, or in the office of the manager in which a complaint was filed, in which case the officer or manager will forward the application to the Field Commissioner or the examiner, as the case may be.

16. Section 221.106 is amended to read as follows:

§ 221.106 *Fees payable to witness who testifies on request without issuance of subpoena.* Any witness who attends any hearing or the taking of any deposition at the request of any party to the controversy without having been subpoenaed to do so shall be entitled to the same mileage and attendance fees, to be paid by such party, to which he would have been entitled if he had been first duly subpoenaed as a witness on behalf of such party.

17. Sections 221.55, 221.65, 221.66, 221.69, 221.71, 221.72, 221.73, 221.74, 221.77, and 221.97 are amended by striking out "Field Commissioner" wherever that term appears in these sections and substituting therefor the word "examiner".

(R. S. 2478; 43 U. S. C. 1201)

These amendments shall take effect upon publication in the FEDERAL REGISTER.

(Signed) FRED A. SEATON,
Secretary of the Interior.

SEPTEMBER 28, 1956.

U. S. GOVERNMENT PRINTING OFFICE: 1956 O—404247

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Copies to all CFR holders 10/30/56

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1963]

PART 192—OIL AND GAS LEASES → Superseded by 2002

PART 201—MINERAL DEPOSITS IN THE OUTER CONTINENTAL SHELF

AMOUNT OF BOND REQUIRED OF LESSEE

Shunk
Schuyler
Fisher
Chadney
Holmes

1. Section 192.100 (e) is amended to read as follows:

§ 192.100 *Amount of bonds required of lessee.* * * *

(e) In lieu of bonds required under any of the preceding paragraphs the holder of leases or of operating agreements approved by the Department or holder of operating rights by virtue of being designated operator or agent by the lessees pending departmental approval of operating agreements, may furnish a bond the amount of which must be $150,000 for full nationwide coverage under both the Mineral Leasing Act and the Mineral Leasing Act for Acquired Lands of 1947 (61 Stat. 1913; 30 U. S. C. 351–369), or at the rate of $25,000 for each unit of coverage. A unit of coverage shall be all the lands in any one State or Territory held by the principal under either the Mineral Leasing Act or the Mineral Leasing Act for Acquired Lands. Coverage under both acts in one State or Territory constitutes two units. In lieu of a surety bond, a personal bond in a like amount may be given by the obligor with the deposit as security therefor of negotiable bonds of the United States of a par value equal to the amount specified in the bond. Where upon a default, the surety makes payment to the Government of any indebtedness due under a lease, the face amount of the surety bond and the surety's liability thereunder shall be reduced by the amount of such payment. Thereafter, upon penalty of cancellation of all of the leases covered by such bond the principal shall post a new nationwide bond in the amount of $150,000 or a unit bond, as the case may be, within 6 months after notice, or within such shorter period as the authorized officer of the Bureau of Land Management may fix. However, in lieu thereof, the principal may within that time file separate bonds for each lease. The provisions hereof may be made applicable to any nationwide or unit bond in force at the time of the approval of the amendment of this paragraph by filing in the appropriate land office a written consent to that effect and an agreement to be bound by the provisions hereof executed by the principal and the surety. Upon receipt thereof the bond will be deemed to be subject to the provisions of this paragraph.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189)

2. Section 201.50 is amended to read as follows:

§ 201.50 *Amount of bond required of lessee.* The successful bidder prior to the issuance of an oil and gas or sulphur lease must furnish a corporate surety bond in the sum of $15,000 conditioned on compliance with all of the terms of the lease, unless he already maintains or furnishes a bond in the sum of $100,000 conditioned on compliance with the terms of oil and gas and sulphur leases held by him on the Outer Continental Shelf in the (a) Gulf of Mexico, (b) along the Pacific Coast, or (c) along the Atlantic Coast, as may be appropriate. An operator's bond in the same amount may be substituted at any time for the lessee's bond. The United States reserves the right to require additional security in the form of a supplemental bond or bonds or to increase the coverage of an existing bond if, after operations or production have begun, such additional security is deemed necessary. The amount of bond coverage on leases for other minerals will be determined at the time of the offer to lease and will be stated in the notice of lease offer. Where upon a default, the surety on an Outer Continental Shelf Mineral Lease Bond (Form 4–1258) makes payment to the Government of any indebtedness under a lease secured thereby, the face amount of such bond and the surety's liability thereunder shall be reduced by the amount of such payment. Thereafter, upon penalty of cancellation of all of the leases covered by such bond, the principal shall post a new bond on Form 4–1258 in the amount of $100,000 within 6 months after notice, or within such shorter period as the authorized officer of the Bureau of Land Management may fix. However, in lieu thereof, the principal may within that time file separate bonds for each lease. The provisions hereof may be made applicable to any bond on Form 4–1258 in force at the time of the approval of the amendment of this section by filing in the local office of the Bureau of Land Management in New Orleans, Louisiana, a written consent to that effect and an agreement to be bound by the provisions hereof executed by the principal and surety. Upon receipt thereof the bond will be deemed to be subject to the provisions of this section.

(Sec. 5, 67 Stat. 464; 43 U. S. C. 1334)

FRED A. SEATON,
Secretary of the Interior.

SEPTEMBER 29, 1956.

[F. R. Doc. 56-8021; Filed, Oct. 4, 1956; 8:45 a. m.]

Published in 21 F. R. October 5, 1956

Circular Distribution List

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1964]

PART 191—GENERAL REGULATIONS APPLICABLE TO MINERAL PERMITS, LEASES AND LICENSES

SPECIAL STIPULATION FOR LANDS WHERE SURFACE IS UNDER JURISDICTION OF DEPARTMENT OF AGRICULTURE OR FOR LANDS IN RECLAMATION, OR POWER SITE WITHDRAWALS OR RESERVATIONS

Replaced by 2000

Section 191.6 is amended to read as follows:

§ 191.6 *Special stipulations for lands where surface control is under jurisdiction of the Department of Agriculture or for lands in reclamation, or power site withdrawals or reservations.* Offerors for noncompetitive oil and gas leases and applicants for permits, leases, and licenses for lands, the surface control of which is under the jurisdiction of the Department of Agriculture, will be required to consent to the inclusion therein of the stipulation on Form 4–216. Where the land has been withdrawn for reclamation purposes the offeror or applicant may be required to consent to the inclusion of a stipulation on Form 4–467 if the land is potentially irrigable, or Form 4–467 (a) if the land is within the flow limits of a reservoir site, or Form 4–467 (b) if the land is within the drainage area of a constructed reservoir, or if withdrawn for power purposes, Form 4–1223. Additional conditions may be imposed to protect the land withdrawn if deemed necessary by the agency having jurisdiction over the surface.

(Sec. 32, 41 Stat. 450, sec. 1, 44 Stat. 301, as amended; 30 U. S. C. 189, 271)

FRED A. SEATON,
Secretary of the Interior.

OCTOBER 16, 1956.

[F. R. Doc. 56–8449; Filed, Oct. 19, 1956; 8:46 a. m.]

Published in 21 F.R., October 20, 1956

Circular Distribution List

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1965] Replaced by 2005

PART 196—PHOSPHATE LEASES AND USE PERMITS

MISCELLANEOUS AMENDMENTS

1. Section 196.4 is amended to read as follows:

§ 196.4 *Lease bond.* A compliance bond, in no event less than $5,000, with approved corporate surety (Form 4–1113), or the lessee's personal bond in similar amount (Form 4–1114), will be required prior to the issuance of a lease. Personal bonds must be accompanied by negotiable Federal securities in the amount of the bond. The right is reserved at any time before or after issuance of the lease to require an increase of the amount of the bond, whether a corporate or personal bond, in any case where the Bureau of Land Management deems it proper to do so.

2. The text of § 196.9 is redesignated as paragraph (a) of that section and a new paragraph (b) is added thereto, to read as follows:

§ 196.9 *Issuance of noncompetitive lease.* * * *

(b) If the applicant dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed; if probate has been completed, or is not required, to the heirs or devisees; and if there are minor heirs or devisees, to their legal guardian or trustee in his name, provided there is filed in all cases the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person, who as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign such forms.

(ii) Evidence that the heirs or devisees are the heirs or devisees of the deceased applicant and are the only heirs or devisees of the deceased.

(iii) A statement over the signature of each heir or devisee concerning citizenship and holdings similar to that required by § 196.7 (b) and (c).

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the applicant and citing the provisions of the law of the deceased's last domicile showing no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to citizenship and holdings similar to that required by § 196.7 (b) and (c), except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

(3) Where there is a legal guardian or trustee:

(i) A certified copy of the court order authorizing the guardian or trustee to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; statements by the guardian or trustee as to the citizenship and holdings of each of the minors and as to his own citizenship and holdings, including his holdings for the benefit of other minors similar to that required by § 196.7 (b) and (c).

3. Section 196.12 is amended to read as follows:

§ 196.12 *Action by successful bidder.* (a) The successful bidder at a sale by public auction must on the day of sale deposit with the Manager of the proper land office, or other officer conducting the sale and each bidder at a sale by sealed bids must submit with his bid the following: Certified check, cashier's check, bank draft, money order, or cash for one-fifth of the amount bid by him and a statement over the bidder's own signature with respect to citizenship and interests held, similar to that required by § 196.7 (b) and (c).

(b) Upon receipt of the high bid at, and at the close of, an oral auction, or the opening of the sealed bids, the authorized officer, subject to his right to reject any and all bids, will award the lease to the successful bidder, who will be notified accordingly. If the land is surveyed four copies of the lease will be sent to the successful bidder, who will be required within 30 days from receipt thereof to execute them, pay the balance of the bonus bid, the first year's rental and the cost of publication of the notice of lease offer as specified in § 196.11, and file a bond as required by § 196.4. The lease will be dated as of the first day of the month following its issuance unless the successful bidder requests that it be dated as of the first day of the month of issuance. If the land is unsurveyed, the successful bidder will not be required to comply with the requirements of this subsection until the land has been surveyed and the plat of such survey accepted and officially filed. Such survey will be at the expense of the Government. If the bidder after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under the Mineral Leasing Act. If the lease awarded to the successful bidder is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease. If the bidder dies before the lease is issued, there must be furnished satisfactory evidence, such as specified in § 196.9 (b), in order that the Manager of the proper land office may determine to whom the lease may be issued.

4. Section 196.13 is amended by adding thereto new paragraphs (e) and (f) as follows:

§ 196.13 *Assignments of leases; subleases.* * * *

(e) No transfer will be approved if the transferee is not qualified to take and hold a lease or if his bond is insufficient. A minor, except a minor heir or devisee of a lessee, is not qualified to hold a lease and a transfer to a minor will not be approved.

(f) In order for the heirs or devisees of a deceased holder of a lease, an operating agreement, or a royalty interest in a lease, to be recognized by the Secretary as the holder of the lease, agreement or interest, there must be furnished the appropriate showing required under § 196.9 (b).

5. Section 196.15 is amended to read as follows:

§ 196.15 *Relinquishment of lease.* Upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease or any legal subdivision thereof. A relinquishment must be filed in duplicate in the appropriate land office. Upon its acceptance it shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to provide for the preservation of any mines or productive works or permanent improvements on the leased lands in accordance with the regulations and terms of the lease.

F. E. WORMSER,
Acting Secretary of the Interior.

OCTOBER 19, 1956.

[F. R. Doc. 56-8685; Filed, Oct. 25, 1956; 8:45 a. m.]

Published in 21 F.R. October 26, 1956

Circular Distribution List

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TITLE 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior

[Circular No. 1966]

PART 7—OFFICERS AND EMPLOYEES: LANDS AND RESOURCES

EXCEPTIONS

1. Section 7.4 (a) (1) is amended to read as follows:

§ 7.4 *Exceptions.* (a) (1) The act of June 1, 1938 (52 Stat. 609) as amended by the act of July 14, 1945 (59 Stat. 467, 43 U. S. C. 682a) authorizes any officer or employee of the Department of the Interior stationed in Alaska to purchase or lease under that act one tract in Alaska for any purposes authorized by the act, except as a business site; section 1 of the act of March 3, 1879 (20 Stat. 394, 43 U. S. C. 31) provides that the Director and members of the Geological Survey shall have no personal or private interests in the lands or mineral wealth of the region under survey; and Revised Statute section 452 (43 U. S. C. 11) provides that all officers, clerks, and employees of the Bureau of Land Management are prohibited from directly or indirectly purchasing or becoming interested in the purchase of any of the public land. Apart from such restrictions, and if otherwise qualified, (i) any officer or employee of the Department of the Interior stationed in Alaska (except an officer or employee of the Bureau of Land Management or the spouse of such person) shall not by reason of being such an officer or employee be precluded from retaining or acquiring any interest in the lands or resources in Alaska administered by the Bureau of Land Management, other than in a mineral lease or mining claim, (ii) any temporary, limited, part-time, WAE (when actually employed) or WOC (without compensation) employee of the Department of the Interior (except an officer or employee of the Bureau of Land Management or the spouse of such person) shall not by reason of being such an employee be precluded from retaining or acquiring any interest in lands or resources administered by the Bureau of Land Management, and (iii) any temporary, intermittent, or seasonal employee of the Bureau of Land Management engaged in field work relating to land, range, forest, and mineral conservation and management activities, if such employment does not exceed 180 working days in each calendar year, shall not by reason of such employment be precluded from retaining any interest, including renewal or continuation of existing rights, in lands or resources administered by the Bureau of Land Management: *Provided, however,* That such employee shall not acquire any additional interest in such lands or resources during such employment.

2. Section 7.4 (c) is revoked in its entirety.

(R. S. 161, 452; 5 U. S. C. 22, 43 U. S. C. 11)

F. E. WORMSER,
Acting Secretary of the Interior.

OCTOBER 19, 1956.

[F. R. Doc. 56-8688; Filed, Oct. 25, 1956; 8:46 a. m.]

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Circular Distribution List

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1967]

PART 198—SULPHUR PERMITS AND LEASES

Part 198, Title 43 of the Code of Federal Regulations is revised as follows:

AUTHORITY: §§ 198.1 to 198.27, inclusive, issued under sec. 32, 41 Stat. 450; 30 U. S. C. 189. Interpret or apply secs. 1 to 6, 44 Stat. 301–302, as amended; 30 U. S. C. 271–276.

GENERAL

§ 198.1 *Statutory authority.* (a) Sections 1 to 7 of the Act of April 17, 1932 (44 Stat. 301), as amended July 16, 1932 (47 Stat. 701, 30 U. S. C. 271–276), authorize the Secretary of the Interior to:

(a) Issue permits to prospect for sulphur in public lands or in public lands disposed of with a reservation of such deposits to the United States located in the States of Louisiana and New Mexico.

(b) Lease such lands containing valuable deposits of sulphur.

§ 198.2 *Definitions.* The following terms, as used in this part or in any lease or permit approved under the regulations in this part, shall have the meanings here given:

(a) *Land Office, or appropriate land office.* The Land Office, Bureau of Land Management, Santa Fe, New Mexico, for lands covered by a permit, lease, or application therefor, situated in the State of New Mexico, and the Eastern States Land Office, Bureau of Land Management, Washington 25, D. C., for lands covered by a permit, lease, or application therefor, situated in the State of Louisiana.

(b) *Manager.* The Manager of the appropriate land offices as defined in paragraph (a) of this section.

(c) *Appropriate State Supervisor.* State Supervisor, Bureau of Land Management, Santa Fe, New Mexico, when the lands covered by a permit, lease or application therefor are situated in the State of New Mexico, and Eastern States Supervisor, Bureau of Land Management, Washington 25, D. C., when the lands covered by a permit, lease or application therefor are situated in the State of Louisiana.

§ 198.3 *Area and limitations on holdings.* Except where the rule of approximation applies, a sulphur permit or lease may not include over 640 acres in reasonably compact form entirely within a 6-mile square. No person, association or corporation may hold more than three sulphur permits or leases in any one State during the life of such permits or leases.

§ 198.4 *Qualifications of applicant.* (a) As used in this section, "applicant" means an applicant for a permit under § 198.8, for a lease under § 198.12, the successful bidder to whom a lease is awarded under § 198.22, or an assignee or transferee under § 198.26.

(b) Permits and leases may be issued to citizens of the United States, association of citizens, and corporations organized under the laws of the United States or of any State or Territory thereof.

(c) All applicants must file with the Manager statements and evidence as follows (unless previously filed, in which event a reference by serial number to the record and the land office in which filed, together with a statement as to any amendment, will be accepted):

(1) As to citizenship, whether native born or naturalized.

(2) If applicant is an association (including a partnership), it must submit a certified copy of the articles of association and the same showing as to the citizenship and holdings of its members as required of an individual.

Published in 21 F.R. December 1, 1956

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(3) A corporation must submit a statement showing:

(i) The State in which it is incorporated.

(ii) That it is authorized to hold permits and leases for sulphur deposits and that the person executing an instrument on behalf of the corporation is authorized to act in such matters.

(iii) The percentage of voting stock, of all the stock owned by aliens and of all the stock owned by those having addresses outside of the United States. When the stock owned by aliens is over 10 percent, additional information may be required.

(iv) The name, address, citizenship, and acreage holdings of any stockholder owning or controlling 20 percent or more of the stock of any class, of the corporation.

(4) That holdings of sulphur permits or leases do not exceed the number specified in § 198.3.

§ 198.5 *Permits and leases for lands disposed of with reservation of sulphur.* Where lands included in a permit or lease have been disposed of with reservation of sulphur deposits, a permittee or lessee must make full compliance with the law under which such reservation was made. See the Acts of March 4, 1933 (47 Stat. 1570; 30 U. S. C. 124); December 29, 1916 (39 Stat. 862; 43 U. S. C. 291–301); June 17, 1949 (63 Stat. 201); June 21, 1949 (63 Stat. 215; 30 U. S. C. 54) and August 13, 1954 (68 Stat. 708), and other laws authorizing such reservations.

§ 198.6 *Requirements when lands are within a withdrawal.* Where any part of the lands embraced in an application for sulphur permit or lease is within a withdrawal which does not preclude disposition of the sulphur deposits, the head of the Government agency having control will be called upon for a report as to whether there is any objection to the granting of a sulphur permit or lease. Where he recommends that a special stipulation be required to protect the interests of the United States, an appropriate stipulation may be included in the lease or permit.

§ 198.7 *Protection of pre-existing mining claims.* Mining claims for sulphur deposits on lands such as specified in § 198.1 (a) situated in Louisiana which were valid on April 17, 1926, or on such lands in New Mexico, on July 16, 1932, if duly maintained, may be patented under the law under which they were initiated. Otherwise, such deposits may be secured only under the Act of April 17, 1926 (44 Stat. 301), as amended July 16, 1932 (47 Stat. 701, 30 U. S. C. 271–276).

SULPHUR PROSPECTING PERMITS

§ 198.8 *Application for permit.* An application for a permit must be filed in duplicate in the appropriate land office. A filing fee of $10, which will be retained as a service charge in any event, must accompany the application. No specific form of application is required, but the application should include the information and evidence called for in §§ 198.4 and 198.19 (a) (1) and (2).

§ 198.9 *Rights conferred.* Two-year permits issued and Form 4–701 [1] grant the permittee the exclusive right to prospect and explore the lands described therein to determine the existence of, or workability of, the sulphur deposits. Only such material may be removed from the land as is necessary to experimental work or the demonstration of the existence of such deposits in commercial quantities.

§ 198.10 *Permit bond.* Prior to the issuance of a permit for lands entered or patented with a reservation of the sulphur deposits to the United States, or lands within a reclamation project, the applicant must furnish an approved corporate surety bond of at least $1,000 (Form 4–1130) or a personal bond in similar amount (Form 4–1131) secured by negotiable Federal securities in the amount of the bond. The right is reserved to require the applicant, in any case where deemed necessary, to furnish a permit bond.

§ 198.11 *Cancelled permits.* Upon cancellation of a sulphur permit for any reason, the land will not be open to sulphur permit applications until the cancellation is noted on the records of the land office.

§ 198.12 *Reward for discovery.* (a) Upon a satisfactory showing that valuable deposits of sulphur have been discovered by a permittee within the area covered by his permit before the permit expires, and that the land is chiefly valuable therefor, the permittee shall be entitled to a preference right lease for all or part of the land embraced in his permit in a reasonably compact form. An application for a preference right lease by a sulphur permittee must be filed not later than 30 days after his permit expires. The application must be filed in the appropriate land office and describe the land desired, show the date valuable sulphur deposits were discovered,

[1] A copy of this, as well as of every other form mentioned in this part, may be obtained from the Land Office, Santa Fe, New Mexico, or from the Director, Bureau of Land Management, Washington 25, D. C. Copies of Forms 4–701 and 4–1313 were filed with the Federal Register Division as part of the original document.

specify fully the extent and mode of occurrence of the deposits as disclosed by prospecting work, and show any change in the information contained in the application for sulphur permit. The application must be accompanied by the first year's lease rental at the rate of 50 cents per acre or fraction thereof. The lease will be on Form 4–1313 and will be dated the first day of the month following the date of the decision notifying the applicant that he is entitled to a preference right sulphur lease, unless otherwise specified therein. If the sulphur permit expires and the application for sulphur lease is finally rejected, royalty for the sulphur mined will be charged at the sulphur permit rate and such mining will not constitute a trespass.

(b) If the lands are unsurveyed, the sulphur permittee, prior to the issuance of a lease, will be required to deposit with the appropriate State Supervisor the estimated cost of making a survey of the lands as officially determined by the Bureau of Land Management. This survey will be an extension of the public land surveys over the lands applied for, and the lands to be included in the sulphur lease will be conformed to the subdivision of such survey.

(c) If the sulphur permittee dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed; if probate has been completed, or is not required, to the heirs or devisees; and if there are minor heirs or devisees, to their legal guardian or trustee in his name, provided there is filed in all cases the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person, who as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign such forms.

(ii) Evidence that the heirs or devisees are the heirs or devisees of the deceased permittee or lessee and are the only heirs or devisees of the deceased.

(iii) A statement over the signature of each heir or devisee concerning citizenship and holdings similar to that required by § 198.4 (c) (1) and (4).

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the permittee or lessee and citing the provisions of the law of the deceased's last domicile showing no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to citizenship and holdings similar to that required by § 198.4 (c) (1) and (4), except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

(3) Where there is a legal guardian or trustee:

(i) A certified copy of the court order authorizing the guardian or trustee to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; statements by the guardian or trustee as to the citizenship and holdings of each of the minors and as to his own citizenship and holdings, including his holdings for the benefit of other minors similar to that required by § 198.4 (c) (1) and (4).

§ 198.13 *Expiration of permit.* Unless a lease application is filed pursuant to § 198.12 the permit will expire at the end of its period without notice to the permittee. No extension of the term will be granted.

SULPHUR LEASES

§ 198.14 *Form of lease.* Leases shall be issued on Form 4–1313.

§ 198.15 *Lease bond.* A compliance bond, in no event less than $5,000, with approved corporate surety (Form 4–1113), or the lessee's personal bond in similar amount (Form 4–1114), will be required prior to the issuance of a lease. Personal bonds must be secured by negotiable Federal securities in the amount of the bond.

§ 198.16 *Royalty.* Leases based upon discovery of valuable sulphur deposits under a sulphur permit shall provide for a royalty of 5 percent of the quantity or gross value of the output of sulphur at the point of shipment to market. Leases for lands known to contain valuable deposits of sulphur and not covered by sulphur permits or leases shall provide for such royalty as will be determined prior to the issuance of the lease, but in no case shall the royalty be less than 5 percent of the quantity or gross value of the output of sulphur at the point of shipment to market.

§ 198.17 *Rental.* Leases shall provide for the payment, in advance, of an annual rental of 50 cents for each acre or part thereof covered by the lease, beginning with date of the lease, such rental for any year to be credited against the first royalties as they accrue under the lease during the year for which the rental was paid.

§ 198.18 *Minimum production.* Leases will require the payment of a royalty on a minimum annual production beginning with the sixth year of the lease, unless operations are interrupted by strikes, the elements, or casualties not attributable to the lessee, or unless, on application and showing made, lease operations are suspended by the Department of the Interior for the reasons specified in section

39 of the Mineral Leasing Act of February 25, 1920, as amended, (30 U. S. C. 209).[3]

§ 198.19 *Application for lease by competitive bidding.* (a) An application for a lease must be filed in duplicate in the appropriate land office. A filing fee of $10, which will be retained as a service charge in any event, must accompany the application. No specific form is required, but the application should include the following:

(1) The applicant's name and address.

(2) If the requested lands are surveyed, they should be described by legal subdivisions, showing meridian, State, township, range, and section; if not surveyed, by metes and bounds connected by courses and distance with some corner of the public land survey. When possible, the approximate legal subdivisions of unsurveyed lands should be stated.

(3) Evidence that the land is valuable for its sulfur content, with a statement as to the character, extent, and mode of occurrence of the sulfur deposits.

(b) The application must be signed by applicant, or by his attorney in fact, supported by the power of attorney.

(c) If it be found that the area applied for is not available for leasing, the applicant will be so informed.

§ 198.20 *Notice of lease offer.* Notice of offer of lands or deposits for lease will be by publication once a week for four consecutive weeks or for such other period as may be determined, in a newspaper of general circulation in the county or parish in which the lands or deposits are situated. The notice will state the time and place of sale, whether the sale will be at public auction or by sealed bids, the description of the lands and the place where a detailed statement of the terms and conditions of the lease offer and the obligations of the successful bidder to pay for publication of that notice may be obtained. A copy of the notice will be posted in the appropriate land office during the period of publication. The detailed statement will set forth the terms and conditions of the sale, including the manner in which bids may be submitted, and statements that the successful bidder will be required, prior to the issuance of a lease, to pay his proportionate share of the total cost of publication of the notice of lease offer, and that the successful bidder's share shall be that proportion of the total advertising cost, that the number of parcels of land awarded to him bears to the number of parcels for which high bidders are declared. The right is reserved to reject any and all bids, and should a bid be rejected, the deposit made by the bidder will be returned. The commission of any act of intimidation of bidders, or the combination of bidders to hinder or prevent bidding, is unlawful. (See 18 U. S. C. 1860).

[3] See showing required under § 191.26 of this title, as amended.

§ 198.21 *Bid deposits.* The successful bidder at a sale by public auction must deposit with the Manager of the Land Office, or the officer conducting the sale, on the date of the sale, and each bidder at a sale by sealed bids, must submit with his bid, certified check, cashier's check, bank draft, money order, or cash for one-fifth of the amount of the bid, and evidence of qualifications as required by § 198.4.

§ 198.22 *Award of lease.* Upon receipt of the high bid at, and at the close of, an oral auction, or the opening of the sealed bids, the Manager, subject to his right to reject any and all bids, will award the lease to the successful bidder, who will be notified accordingly. Four lease forms will be sent to the successful bidder, who will be required within 30 days from receipt thereof to execute them, pay the balance of the bonus bid, the first year's rental, and the cost of publication of the notice of lease offer as specified in § 198.20 and file a bond as required by § 198.15. If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under the Mineral Leasing Act. If the lease awarded to the successful bidder is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease. If the bidder dies before the lease is issued, there must be furnished satisfactory evidence such as specified in § 198.12 (c), in order that the Manager of the appropriate land office may determine to whom the lease may be issued.

§ 198.23 *Renewal leases.* An application for a renewal lease must be filed in the appropriate land office within 90 days prior to the expiration of the lease term. Thereafter, the lessee will be notified of the terms and conditions to be prescribed in the renewal lease. Unless the lessee files written objections to the proposed terms, or files a relinquishment of the lease within 30 days after receipt of such notice, he will be deemed to have agreed to such terms and to the renewal of the lease. Prior to the issuance of a renewal lease, the lessee will be required to submit a new bond as prescribed in § 198.15. Each application for renewal must be accompanied by a filing fee of $10, which will not be returnable.

§ 198.24 *Relinquishment of lease.* Upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease or any legal subdivision thereof. A relinquishment must be filed in duplicate in the appropriate land office. Upon its acceptance it shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his surety to

make payment of all accrued rentals and royalties and to provide for the preservation of any mines or productive works or permanent improvements on the leased lands in accordance with the regulations and terms of the lease.

§ 198.25 *Cancellation of lease.* If the lessee fails to comply with the general regulations in force at the date of the lease, or defaults with respect to any of the terms, covenants, or stipulations of the lease, and such failure or default continues for 30 days after service of written notice thereof by the lessor, then the lessor may bring appropriate court proceedings to forfeit and cancel the lease as provided in section 31 of the Mineral Leasing Act (30 U. S. C. 188). A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other cause, or for the same cause occurring at any other time.

TRANSFERS OF PERMITS AND LEASES

§ 198.26 *Transfers, including subleases.* (a) Permits and leases may be transferred in whole or in part. The approval of a transfer of part of the lands in a permit or lease will create a new permit or lease for the transferred portion. A discovery made before or after the partial assignment, either on the retained or the assigned portions will not inure to the benefit of the other, nor will approval of a transfer extend the life of the permit or the renewal periods of the lease. Transfers, whether by direct assignments, operating agreements, subleases, working or royalty interests, or otherwise, must be filed for approval in duplicate at the appropriate land office within 90 days after execution. Evidence of the qualifications of the assignee or transferee to hold the permit or lease, as required by § 198.4 must be submitted simultaneously. Before a transfer of a permit or lease will be approved, the consent of the surety to the substitution of the transferee as principal, or a new bond with the transferee as principal, must be submitted if the original permit or lease required the maintenance of a bond. If the transfer is for part of the land only, it must be for a legal subdivision and (1) the consent of the surety to the transfer and its agreement to remain bound as to the interest retained by the permittee or lessee must be submitted, as well as (2) a new bond with the transferee as principal covering the portion of the lands transferred. The account under the permit or lease must be in good standing before approval of transfer will be given. A transfer will take effect the first day of the month following its approval, or if the transferee requests, the first day of the month of the approval.

(b) An application for approval of any instrument transferring a lease or permit, or interest therein, must be accompanied by a service fee of $10. An application not accompanied by such a fee will not be accepted. The fee will not be returned even though the application is later withdrawn or rejected.

(c) No transfer will be approved if the transferee is not qualified to take and hold a permit or lease or if his bond is insufficient. A minor, except a minor heir or devisee of a permittee or leasee, is not qualified to hold a permit or lease and a transfer to a minor will not be approved.

(d) In order for the heirs or devisees of a deceased holder of a permit or lease, an operating agreement, or a royalty interest in a permit or lease, to be recognized by the Department as the holder of the permit or lease, agreement or interest, there must be furnished the appropriate showing required under § 198.12 (c).

(e) The assignor or sublessor and his surety will continue to be responsible for the performance of any obligation under the permit or lease until the assignment or sublease is approved. If the assignment or transfer is not approved, their obligations to the United States shall continue as though no such assignment or transfer had been filed for approval. After approval the assignee or sublessee and his surety will be responsible for the performance of all permit or lease obligations notwithstanding any terms in the assignment or sublease to the contrary.

§ 198.27 *Overriding royalties.* (a) An overriding royalty interest may be created by assignment or otherwise: *Provided, however,* That if the total of the overriding royalty interests at any time exceeds one percent of the gross value of the output at the point of shipment to market, they shall be subject to reduction or suspension by the Secretary to a total of not less than one percent of such gross value, whenever, in the interest of conservation, it appears necessary to do so in order (1) to prevent premature abandonment, or (2) to make possible the economic mining of marginal or low grade deposits. Where there is more than one overriding royalty interest, any such suspension or reduction shall be applied to the respective interests in the manner agreed upon by the holders thereof or, in the absence of such agreement, in the inverse order of the dates of creation of such interests.

(b) Any assignment, sublease, or other transfer or agreement which creates an overriding royalty interest will not be approved unless the owner of that interest files his agreement in writing that such interest is subject to suspension or reduction as provided in paragraph (a) of this section. No overriding royalties shall be paid at a rate in excess of the rate to which they have been so reduced until otherwise authorized by the Secretary.

FRED A. SEATON,
Secretary of the Interior.

NOVEMBER 26, 1956.

[F. R. Doc. 56-9838; Filed, Nov. 30, 1956; 8:46 a. m.]

INT.-DUP. SEC., WASH., D.C. 8261

GPO 842-219

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1968]

PART 188—ASPHALT LEASES

A new Part 188, is added to Chapter 1, Title 43 of the Code of Federal Regulations, reading as follows:

PART 188—ASPHALT LEASES

GENERAL

AUTHORITY: §§ 188.1 to 188.21, issued under sec. 32, 41 Stat. 450; 30 U. S. C. 189. Interpret or apply 58 Stat. 483–485, 63 Stat. 76, 84; 16 U. S. C. 482n–1.

GENERAL

§ 188.1 *Authority to lease.* The act of June 28, 1944 (58 Stat. 463, 483–485), authorizes the Secretary of the Interior to lease asphalt deposits in certain lands situated in Oklahoma, acquired under the provisions thereof.

§ 188.2 *Lands applicable.* The lands or asphalt deposits subject to the regulations in this part are those situated in Oklahoma which were (a) sold to the United States under the terms of a contract executed October 8, 1947, by and between the Secretary of the Interior and officials of the Choctaw and Chickasaw Nations of Indians in Oklahoma, which contract was ratified by the act of June 24, 1948 (62 Stat. 596), and (b) acquired when the purchase price provided in the contract was appropriated by the act of May 24, 1949 (63 Stat. 76, 84).

§ 188.3 *Definitions.* The following terms, as used in this part, or in any lease approved under the regulations in this part, shall have the meanings here given:

(a) *Secretary.* The Secretary of the Interior or any person duly authorized to exercise the powers vested in that officer.

(b) *Land Office.* The Land Office, Bureau of Land Management, Santa Fe, New Mexico, for lands covered by a lease or application therefor, situated in the State of Oklahoma.

(c) *Manager.* The Manager of the Land Office as defined in paragraph (b) of this section.

(d) *Mining Supervisor.* The Regional Mining Supervisor of the Geological Survey for the State in which the lands under lease or application therefor are situated.

§ 188.4 *Area and limitation on holdings.* Except where the rule of approximation applies, a lease may not include over 640 acres in reasonably compact form. No person, association or corporation may hold, either directly or indirectly, leases for an area that exceeds in the aggregate 2,560 acres.

§ 188.5 *Qualifications of applicant.* (a) As used in this section, "applicant" means an applicant for lease under § 188.12, the successful bidder to whom a lease is awarded under § 188.15, or an assignee or transferee under § 188.20.

(b) Leases may be issued to citizens of the United States, association of citizens, and corporations organized under the laws of the United States or of any State or Territory thereof.

(c) All applicants must file with the Manager statements and evidence as follows (unless previously filed, in which event a reference by serial number to the record and where it is filed, together with a statement as to any amendment, will be accepted):

(1) As to citizenship, whether native born or naturalized.

(2) If applicant is an association (including a partnership), it must submit a certified copy of the articles of association and the same showing as to the citizenship and holdings of its members as required of an individual.

(3) A corporation must submit a statement showing:

(i) The State in which it is incorporated.

(ii) That it is authorized to hold leases for asphalt deposits and that the person executing an instrument on behalf of the corporation is authorized to act in such matters.

(iii) The percentage of voting stock, of all the stock owned by aliens and of all the stock owned by those having addresses outside of the United States. When the stock owned by aliens is over 10 percent, additional information may be required.

(iv) The name, address, citizenship, and acreage holdings of any stockholder owning or controlling 20 percent or more of the stock of any class, of the corporation.

(4) That holdings do not exceed the acreage limitations specified in § 188.4.

§ 188.6 *Leases for lands disposed of with reservation of asphalt deposits.* Where lands included in a lease have been or may be disposed of with reservation of the asphalt deposits, rights of surface use are subject to the provisions of the law under which such reservation was made. See the act of February 19, 1912 (37 Stat. 67), and the act of August 3, 1955 (69 Stat. 445), and the regulations thereunder, in Part 119 of this chapter.

§ 188.7 *Requirements when lands are within a withdrawal.* Where any part of the lands embraced in an application for asphalt lease is within a withdrawal which does not preclude disposition of the asphalt deposits, the head of the Government agency having control will be called upon for a report as to whether there is any objection to the granting of an asphalt lease. Where he recommends that a special stipulation be required to protect the interest of the United States, an appropriate stipulation may be included in the lease.

ASPHALT LEASES

§ 188.8 *Form of lease.* Leases shall be issued on Form 4–1320.[1]

[1] A copy of this, as well as of every other form mentioned in this part, may be obtained from the Land Office, Santa Fe, New Mexico, or from the Director, Bureau of Land Management, Washington 25, D. C.

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Circular Distribution List

§ 188.9 *Lease bond.* A compliance bond, in no event less than $1,000, with approved corporate surety (Form 4–1113), or the lessee's personal bond in similar amount (Form 4–1114), will be required prior to the issuance of a lease. Personal bonds must be secured by negotiable Federal securities in the amount of the bond. If the amount of the bond is fixed at $1,000, the lessee may, instead, furnish a bond on Form 4–1113 with two qualified individual sureties, as provided in § 191.13 of this chapter. The right is reserved at any time before or after issuance of the lease to require an increase of the amount of the bond, whether a corporate, personal or individual surety bond, in any case where the Bureau of Land Management deems it proper to do so.

§ 188.10 *Royalty and rental.* (a) The rate of royalty shall be fixed prior to the issuance of the lease but in no event shall it be less than 25 cents per ton of two thousand pounds of marketable production.

(b) Beginning with the date of the lease, annual rental payable in advance for each acre or part thereof covered by the lease shall be 25 cents for the first calendar year or fraction thereof, 50 cents for the second, third, fourth and fifth calendar years, respectively, and $1 for each calendar year thereafter during the continuance of the lease, such rental for any year to be credited against royalties accruing under the lease during the year for which the rental was paid.

§ 188.11 *Minimum production.* (a) Each lease will provide for the mining of asphalt deposits from the lands involved and the payment of royalty thereon to a value of not less than $1 an acre or fraction thereof each year, beginning with the sixth full calendar lease year, except when operations are interrupted by strikes, the elements, or casualties not attributable to the lessee or unless operations are suspended upon a showing that the lease can not be operated except at a loss because of unfavorable market conditions.

(b) Applications by lessees for relief from the production requirement of leases shall be filed, in triplicate, with the Mining Supervisor, who is authorized to grant such relief. A copy of each application shall be filed in the land office. Complete information must be furnished showing the necessity for such relief.

§ 188.12 *Application for lease by competitive bidding.* (a) An application for lease must be filed in duplicate in the land office. A filing fee of $10, which will be retained as a service charge in any event, must accompany the application. No specific form is required, but the application should include the following:

(1) The applicant's name and address.

(2) If the requested lands are surveyed, they should be described by legal subdivisions, showing meridian, township, range, and section; if not surveyed, by metes and bounds connected by courses and distance with some corner of the public land survey. When possible, the approximate legal subdivisions of unsurveyed lands should be stated.

(3) Evidence that the land is valuable for its asphalt content, with a statement as to the character, extent, and mode of occurrence of the asphalt deposits.

(b) The application must be signed by applicant, or by his attorney in fact, supported by the power of attorney.

(c) If it be found that the area applied for is not available for leasing, the applicant will be so informed.

§ 188.13 *Notice of lease offer.* Notice of offer of lands or deposits for lease will be by publication once a week for four consecutive weeks or for such other period as may be determined, in a newspaper of general circulation in the county in which the lands or deposits are situated. The notice will state the time and place of sale, whether the sale will be at public auction or by sealed bids, the description of the lands and the place where a detailed statement of the terms and conditions of the lease offer and the obligations of the successful bidder to pay for publication of that notice may be obtained. A copy of the notice will be posted in the land office during the period of publication. The detailed statement will set forth the terms and conditions of the sale, including the manner in which bids may be submitted, and statements (a) that the successful bidder will be required, prior to the issuance of a lease, to pay his proportionate share of the total cost of publication of the notice of lease offer, and that the successful bidder's share shall be that proportion of the total advertising cost, that the number of parcels of land awarded to him bears to the number of parcels for which high bidders are declared, and (b) that the Government reserves the right to reject any and all bids. If any bid be rejected, the deposit will be returned. The commission of any act of intimidation of bidders, or the combination of bidders to hinder or prevent bidding, is unlawful. See 18 U. S. C. 1860.

§ 188.14 *Bid deposits.* The successful bidder at a sale by public auction must deposit with the Manager of the Land Office, or the officer conducting the sale, on the date of the sale, and each bidder at a sale by sealed bids, must submit with his bid, certified check, cashier's check, bank draft, money order, or cash for one-fifth of the amount of the bid, and evidence of qualifications as required by § 188.5 (c).

§ 188.15 *Award of lease.* (a) Upon receipt of the high bid at, and at the close of, an oral auction, or the opening of the sealed bids, the Manager, subject to his right to reject any and all bids, will award the lease to the successful bidder, who will be notified accordingly. Four copies of the lease will be sent to the successful bidder, who will be required, within 30 days from receipt thereof, to execute them, pay the balance of the bonus bids, the first year's rental, and the cost of publication of the notice of lease offer as specified in § 188.13, and file a bond as required by § 188.9. If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and deposited in the general fund of the Treasury of the United States. (See act of June 28, 1944, 58 Stat. 463, 485). If the lease awarded to the successful bidder is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease.

(b) If the bidder dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed; if propate has been completed, or is not required, to the heirs or devisees; and if there are minor heirs or devisees, to their legal guardian or trustee in his name, provided there is filed in all cases the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person, who as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign such forms.

(ii) Evidence that the heirs or devisees are the heirs or devisees of the deceased lessee and are the only heirs or devisees of the deceased.

(iii) A statement over the signature of each heir or devisee concerning citizenship and holdings similar to that required by § 188.5 (c) (1) and (4).

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the lessee and citing the provisions of the law of the deceased's last domicile showing no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to citizenship and holding similar to that required by § 188.5 (c) (1) and (4), except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

(3) Where there is a legal guardian or trustee:

(i) A certified copy of the court order authorizing the guardian or trustee to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; statements by the guardian or trustee as to the citizenship and holding of each of the minors and as to his own citizenship and holdings, including his holdings for the benefit of other minors similar to that required by § 188.5 (c) (1) and (4).

§ 188.16 *Modification and leasing of additional lands or asphalt deposits.* A lessee may obtain modification of his lease to include asphalt lands or asphalt deposits contiguous to those embraced in his lease if the Manager shall determine, after consultation with the Mining Supervisor, that it will be to the advantage of the lessee and the United States, but in no event shall the area embraced in such modified lease exceed in the aggregate 640 acres, except where the rule of approximation applies. The lessee must file his application for modification in duplicate in the land office describing the additional land desired, the reasons for and the advantage to the lessee of such modification. Upon determination by the Manager that the

modification is justified and the interest of the United States is protected, the lease will be modified without competitive bidding to include such part of the land or deposits as he shall prescribe. If, however, it is determined that the additional lands or deposits can be developed as part of an independent operation or that there is a competitive interest in them, they may be offered as provided in § 188.13. Each application for modification must be accompanied by a filing fee of $10 which will not be returnable.

§ 188.17 *Renewal leases.* An application for a renewal lease must be filed in duplicate in the land office within 90 days prior to the expiration of the lease term. Thereafter, the lessee will be notified of the terms and conditions to be prescribed in the renewal lease. Unless the lessee filed written objections to the proposed terms, or files a relinquishment of the lease within 30 days after receipt of such notice, he will be deemed to have agreed to such terms and to the renewal of the lease. Prior to the issuance of a renewal lease, the lessee will be required to submit a satisfactory bond as prescribed in § 188.9. Each application for renewal must be accompanied by a filling fee of $10 which will not be returnable.

§ 188.18 *Relinquishment of lease.* Upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease or any legal subdivision thereof. A relinquishment must be filed in duplicate in the land office. Upon its acceptance it shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his surety to make payment of all accrued rental and royalties and provide for the preservation of any mines or productive works or permanent improvements on the lands relinquished in accordance with the regulations and terms of the lease.

§ 188.19 *Cancellation of lease.* If the lessee fails to comply with the general regulations in force at the date of the lease, or defaults with respect to any of the terms, covenants, or stipulations of the lease, and such failure or default continues for 30 days after service of written notice thereof by the lessor, then the lessor may bring appropriate court proceedings to forfeit and cancel the lease as provided in section 31 of the Mineral Leasing Act of February 25, 1920, as amended (30 U. S. C. 188). A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other cause, or for the same cause occurring at any other time.

TRANSFERS OF LEASES

§ 188.20 *Transfers, including subleases.* (a) Leases may be transferred in whole or in part. The approval of a transfer of part of the land in a lease will create a new lease for the transferred portion. The approval of a transfer will not extend the renewal periods of the lease. Transfers, whether by direct assignments, operating agreements, subleases, working or royalty interests, or otherwise, must be filed for approval in duplicate at the land office within 90 days after execution. Evidence of the qualifications of the assignee or transferee to hold the lease, as required by § 188.5 must be submitted simultaneously. Before a transfer of a lease will be approved, the transferee must submit a new bond, or the consent of the surety on the lease bond to the substitution of the transferee as principal thereon, and the lease account must be in good standing. If the transfer is for part of the land only, it must be for a legal subdivision and (1) the consent of the surety to the transfer and its agreement to remain bound as to the interest retained by the lessee must be submitted, as well as (2) a new bond with the transferee as principal covering the portion of the lands transferred. A transfer will take effect the first day of the month following its approval, or if the transferree requests, in writing, the first day of the month of the approval.

(b) An application for approval of any instrument transferring a lease, or interest therein, must be accompanied by a service fee of $10. An application not accompanied by such a fee will not be accepted. The fee will not be returned even though the application is later withdrawn or rejected.

(c) No transfer will be approved if the transferee is not qualified to take and hold a lease or if his bond is insufficient. A minor, except a minor heir or devisee of a lease, is not qualified to hold a lease and a transfer to a minor will not be approved.

(d) In order for the heirs or devisees of a deceased holder of a lease, an operating agreement, or a royalty interest in a lease, to be recognized by the Department as the holder of the lease, agreement or interest, there must be furnished the appropriate showing required under § 188.15 (b).

(e) The assignor or sublessor and his surety will continue to be responsible for the performance of any obligation under the lease until the assignment or sublease is approved. If the assignment or transfer is not approved, their obligations to the United States shall continue as though no such assignment or transfer had been filed for approval. After approval the assignee or sublessee and his surety will be responsible for the performance of all lease obligations notwithstanding any terms in the assignment or sublease to the contrary.

§ 188.21 *Limitation on overriding royalties.* An overriding royalty interest shall not be created by assignment or otherwise exceeding 50 percent of the rate of royalty first payable to the United States under the lease or an overriding royalty interest which when added to any other overriding royalty interest exceeds that percentage, excepting that where an interest in the leasehold, or operating agreement is assigned, the assignor may retain an overriding royalty interest in excess of the above limitation if he shows to the satisfaction of the Bureau of Land Management, that he has made substantial investments for improvements on the land covered by the assignment.

FRED A. SEATON,
Secretary of the Interior.

JANUARY 12, 1957.

[F. R. Doc. 57-388; Filed, Jan. 17, 1957; 8:48 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1969]

PART 160—GRAZING LEASES

PART 161—THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS

MISCELLANEOUS AMENDMENTS

FEBRUARY 16, 1957.

1. Paragraph (a) of § 160.22 is amended to read as follows:

§ 160.22 *Pledge of leases as security for loans; applications for extension of lease by borrower-lessee.* (a) A lease may be pledged as security for a loan of $500 or more from a lending agency if the loan is for the purpose of furthering the lessee's livestock operations. Before a loan is made, the lending agency may obtain from the authorized officer a written statement concerning the status of the grazing lease and other pertinent information relating thereto. A service charge of $10 will be made for searching the records to furnish such information, except that Federal and State lending agencies shall be exempt from the charge.

(Sec. 2, 48 Stat. 1270; 43 U. S. C. 315a)

2. Paragraph (a) of § 161.18 is amended to read as follows:

§ 161.18 *Pledge of licenses and permits as security for loans; application for extension of permit term by borrower-permittee.* (a) A license or permit may be pledged as security for a loan of $500 or more from a lending agency if the loan is for the purpose of furthering the licensee's or permittee's livestock operations. Before making a loan, a lending agency may obtain from the range manager a written statement concerning the status of the grazing license or permit and other pertinent information relating thereto. A service charge of $10 will be made for searching the records to furnish such information, except that Federal and State lending agencies shall be exempt from the charge.

(Sec. 2, 48 Stat. 1270; 43 U. S. C. 315a)

FRED A. SEATON,
Secretary of the Interior.

[F. R. Doc. 57-1392; Filed, Feb. 21, 1957; 8:46 a. m.]

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter L—Mineral Lands

[Circular 1970]

PART 185—GENERAL MINING REGULATIONS

ENTRY AND LOCATION OF SOURCE MATERIAL UPON PUBLIC LANDS OF THE UNITED STATES CLASSIFIED OR KNOWN TO BE VALUABLE FOR COAL

Part 185 is amended by adding thereto the following sections.

ENTRY AND LOCATION OF SOURCE MATERIAL UPON PUBLIC LANDS VALUABLE FOR COAL

AUTHORITY: §§ 185.140 to 185.152 issued under R. S. 2478, sec. 8, 69 Stat. 679; 43 U. S. C. 1201, 30 U. S. C. 541g.

§ 185.140 *Purpose and authority.* The act of August 11, 1955 (69 Stat. 679) was enacted:

To provide for entry and location, on discovery of a valuable source material, upon public lands of the United States, classified as or known to be valuable for coal, and for other purposes.

The regulations in this part are intended to implement those parts of the act which require action by the Department of the Interior.

§ 185.141 *Public lands known or classified as coal land, containing source material opened to location; exception.* The act in section 1 provides in part as follows:

That, subject to the conditions and provisions of this act and to any valid intervening rights acquired under the laws of the United States, public lands of the United States classified as or known to be valuable for coal subject to disposition under the mineral leasing laws and which are open to location and entry subject to the conditions and provisions of the act of August 13, 1954 (68 Stat. 708), unless embraced within a coal prospecting permit or lease, shall also be open to location and entry under the mining laws of the United States upon the discovery of a valuable source material occurring within any seam, bed, or deposit of lignite in such lands.

§ 185.142 *Copy of Notice of Location to be filed in appropriate County Recorder's office, Land Office, and posted on the claim.* (a) The act in section 1 provides in part as follows:

* * * a copy of the notice of any mining location made for source material occurring in any such bed, seam, or deposit, shall be filed for record in the land office of the Bureau of Land Management for the State in which the claim is situated within ninety days after the date of its location.

(b) The act in section 2 provides as to mining claims located prior to May 25, 1955:

That the locator or locators of such a mining claim shall, not later than one hundred and eighty days from and after the date of this Act, post on the claim and file for record in the office where the notice or certificate of location is of record, an amended notice of the mining location stating that such amended notice is filed pursuant to the provisions of this Act and for the purpose of obtaining the benefits thereof; and that a copy of said amended notice is, within the said one-hundred-and-eighty-day period, filed in the land office of the Bureau of Land Management for the State in which the mining location is situated * * *[1]

(c) The act in section 3 provides in part as follows:

* * * upon filing in the land office designated in section 1 hereof, an adequate description of his claim or claims containing such lignite.

[1] In this connection, the Land Office for North Dakota and South Dakota is located at Billings, Montana; that for Nebraska at Cheyenne, Wyoming; and that for Arkansas, Florida, Louisiana, and Mississippi, at Washington 25, D. C.

(d) Any location notice filed under the above-quoted sections should clearly state that the claim was located for uranium or other source material contained in a bed, seam, or deposit of lignite pursuant to the act of August 11, 1955 (69 Stat. 679). The notice should describe the lands included therein by subdivision, section, township and range, if covered by a public land survey, for a placer claim, and if unsurveyed, or if the location is a lode claim, by a metes and bounds description tied to a corner of the public land survey, or to a mineral monument.

§ 185.143 *Claimant to report annually to Mining Supervisor, Geological Survey.* (a) The act in section 1 provides in part as follows:

That the claimant to any such mining location shall report annually to the Mining Supervisor of the Geological Survey the amount of lignite mined or stripped in the recovery of such valuable source material during each calendar year and tender payment to him of 10 cents per ton thereon * * * subject to the recording and payment requirements * * *

(b) Payments shall be by check, draft or money order, payable to the United States Geological Survey, accompanied by a report of the tons of lignite mined or stripped, whether disposed of or not, in recovering the source material as defined in § 185.147. Each report should show the name of the claim, identify the location, the calendar year for which payment is made and address of claimant. A suggested form of report as shown in Appendix A to the regulations in this part may be used for this purpose.

(c) Tonnage reports and remittances for claims in Montana, North Dakota, South Dakota, and Northern Wyoming should be sent to the Regional Mining Supervisor, U. S. Geological Survey, Billings, Montana. As to claims in other states, the address of the Regional Mining Supervisor may be obtained from the Director, U. S. Geological Survey, Washington 25, D. C.

§ 185.144 *Mineral patents subject to recording and payment requirements to contain reservation of leasable minerals.* (a) The act in section 1 provides in part as follows:

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Circular Distribution List

Any mineral patents issued hereunder shall be made subject to the recording and payment requirements of this section and shall contain a reservation to the United States of all Leasing Act minerals owned by the United States other than lignite containing valuable source material and lignite necessary to be stripped or mined in the recovery of such material.

(b) Under this section, all debts due the United States on account of coal mined under the location must be paid, before a patent will issue.

§ 185.145 *Mineral patents not to include lignite; exception.* (a) The act in section 1 provides in part as follows:

Mining claims located and mineral patents issued under the provisions of this Act shall not include rights to lignite not containing valuable source material except to the extent it may be necessary to mine or strip such lignite in order to mine the source material * * *

(b) The reservation of leasing act minerals including lignite that do not contain valuable source material which will be inserted in every patent issued under the act, will be subject to the right of the patentee to remove such lignite when necessary to mine source material subject to the provisions of the act.

§ 185.146 *Lodes do not include extralateral rights.* (a) The act in section 1 provides in part as follows:

* * * lode claims, shall not include extralateral rights.

(b) The act in section 2 provides in part as follows:

That no extralateral rights shall attach to any mining location validated under this section.

(c) The right of all locators under the act are therefore limited to the extraction of unreserved minerals within the exterior boundaries of the claim extended vertically downward.

§ 185.147 *Source material not in leasing minerals, right to remove lignite, filing of description.* (a) The act in section 3 provides in part as follows:

SEC. 3. Subject to the provisos of section 2 of this Act, any mining location made under the mining laws of the United States, including the Act of August 13, 1954, on lands of the character described in section 1 of this Act, except locations made for lands within the exterior boundaries of a prior coal prospecting permit or lease, if based upon a discovery of valuable source material in deposits other than deposits of Leasing Act minerals, shall include the right to mine, remove, and dispose of lignite containing valuable source material and lignite necessary to be stripped or mined in the recovery of source material contained in lignite, subject to the reporting and payment requirements of section 1 of this Act, and subject to the provisions of the Atomic Energy Act of 1954 (68 Stat. 919), and upon filing in the land office designated in section 1 hereof, an adequate description of his claim or claims containing such lignite.

(b) For description under this section, see § 186.142 (d).

(c) The act in section 3 also provides in part as follows:

That nothing in this section shall be construed to limit or restrict the rights acquired by virtue of a mining claim heretofore or hereafter located, under the 1872 mining act, as amended, or to impose any additional obligation with respect to mining and removal of source material which does not occur within any seam, bed, or deposit of lignite.

(d) Under these provisions, as to locations which were made under the act of August 13, 1954, at a time when the land was known to contain lignite and was not then in a coal permit or lease, or application for permit or lease, the locator would have a right to mine the lignite containing source material and to mine other lignite only after he had complied with the reporting and payment provisions of section 1 of the act with respect thereto. The owner of such a location, who chooses not to comply with these payment and reporting requirements, may mine and remove any mining law minerals in the location, except such minerals contained in lignite, under authority of the act of August 13, 1954. If such a locator damages or destroys any lignite in connection with his mining operations his liability therefor to the United States will be determined under applicable laws. A location made solely under the 1872 Mining Act would not be subject to the provisions of either the August 13, 1954 Act, or of this act, but unless made upon land not then known to contain lignite it would be invalid.

§ 185.148 *Entryman or owner or an assignee thereof of lands patented with coal reservation entitled to exclusive right to locate source material; exception.* (a) The act in section 4 provides as follows:

The entryman or owner of any land or the assignee of rights therein, including lands granted to States, with respect to which the coal deposits have beeen reserved to the United States pursuant to the provisions of the act of March 3, 1909 (35 Stat. 844), or the act of June 22, 1910 (36 Stat. 583), excepting lands embraced within a coal prospecting permit or lease, upon the discovery of valuable source material in lignite situated within such entered, granted, or patented lands, who, except for the reservation of coal to the United States would have the right to mine and remove such source material, shall have the exclusive right to mine, remove, and dispose of lignite containing such source material and lignite necessary to be stripped or mined in the recovery of such material, subject to the reporting and payment requirements of section 1 of this act, and subject to the provisions of the Atomic Energy Act of 1954, upon filing in the land office designated in section 1 hereof, an adequate description sufficient to identify the land containing such lignite.

(b) The description under this section should be by the legal subdivision of the public land survey which contains the deposits.

§ 185.149 *Holder of coal lease entitled to exclusive right to locate source material; exception.* (a) The act in section 5 provides as follows:

The holder of coal leases issued under the provisions of the mineral leasing laws, including the Act of August 7, 1947 (61 Stat. 913), prior to the date of this Act, or thereafter if based upon a prospecting permit issued prior to that date, upon the discovery during the term of such lease of valuable source material in any bed or deposit of lignite situated within the leased lands, shall have the exclusive right to locate such source material under the provisions of this Act but the mining and disposal of such source material shall be subect to the operating provisions of the lease and to the provisions of the Atomic Energy Act of 1954: *Provided,* That the provisions of this section shall not apply to coal prospecting permits or leases on lands embraced within entered, granted, or patented lands described in section 4 of this Act.[3]

(b) The coal lessee for lands not entered, granted, or patented, who desires to obtain the benefits of this section must make a mining location and comply with the act and these regulations with respect thereto, and must also comply with the operating regulations (30 CFR Part 211).

§ 185.150 *Definitions.* (a) The act in section 6 provides in part as follows:

* * * "lignite" shall mean coal classified as ASTM designation: D 388–38, according to the standards established in the American Society for Testing Materials on Coal and Coke under standard specifications for Classification of coals by Rank, contained in public-land deposits considered as valuable under the coal-land classification standards established by the Secretary of the Interior and prescribed in section 30, Code of Federal Regulations, part 201; and "source material" shall mean uranium, thorium, or any other material which is determined by the Atomic Energy Commission pursuant to the provisions of section 61 of the Atomic Energy Act of 1954 to be source material.

(b) The act applies only to deposits of coal coming within the definition set out in the above quotation from the act, and other types of coal deposits are not subject to location under the act, even though found to contain source material.

§ 185.151 *Expiration of act; exception.* (a) The act in section 10 provides as follows:

Twenty years after the effective date of this act, all lands subject to the provisions of section 1 shall be withdrawn from all forms of entry under this act. All claims made pursuant to the provisions of this act shall expire at that time, except for (1) claims for which patent has already been issued, and (2) claims on which application for patent has already been made and on which patent is subsequently issued: *Provided,* That, if the President shall so provide by Executive Order, the provisions of this section shall not become effective until thirty years after the effective date of this act.

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[3] As of August 11, 1955, there were no outstanding coal permits or leases issued under the act of August 7, 1947, in areas containing lignite as defined in the act of August 11, 1955, subject to the mining laws. Consequently, reference to the act of August 7, 1947 will not result in any mining claims being made for source material on acquired lands.

(b) Under this section, no location will be recognized on and after a date 20 years after the date of the act or the expiration of any extension of such period by the President, unless prior to that date an application for a patent has been filed and no patent will issue for any such claim in the absence of evidence of full compliance with the law made prior to that date.

§ 185.152 *Appeals.* A party aggrieved by any official action taken pursuant to this part may appeal from the decision of any subordinate official to the Director of the Bureau of Land Management, and from the Director's decision to the Secretary of the Interior pursuant to the rules of practice (Part 221 of this chapter).

APPENDIX A

Name of Claim
BLM Serial No.
Located in Sec. __, T. __, R.
County
State

REGIONAL MINING SUPERVISOR,
U. S. Geological Survey,
Billings, Montana.

Enclosed is check (draft or money order) payable to the United States Geological Survey for lignite mined or stripped under the above mining claim during the year ending December 31, ____, in accordance with Public Law 357, 84th Congress.

Tons of lignite_____ ____
Payment at 10 cents per ton_____ $____
Name_____
Address_____

NOTE: If section, township, and range are not known, claim should be described as shown in the certificate of location.

December 31 ____, in accordance with Public Law 357, 84th Congress.

Tons of lignite_____ ____
Payment at 10 cents per ton_____ $____
Name _____
Address _____

NOTE: If section, township, and range are not known, claim should be described as shown in the certificate of location.

FRED G. AANDAHL,
Acting Secretary of the Interior.

FEBRUARY 21, 1957.

[F. R. Doc. 57-1533; Filed, Feb. 28, 1957; 8:45 a. m.]

INT.-DUP. SEC., WASH., D.C. 13041

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

[Circular 1971]

PART 65—HOMESTEADS IN ALASKA

MISCELLANEOUS AMENDMENTS

Part 65 is amended as indicated below:

1. Footnote 1 is amended to read as follows:

[1] The homestead laws were extended to Alaska by the act of May 14, 1898 (30 Stat. 409; 48 U. S. C. 371), which was amended by the acts of March 3, 1903 (32 Stat. 1028; 48 U. S. C. 371), July 8, 1916 (39 Stat. 352; 48 U. S. C. 373–375, 378), June 28, 1918 (40 Stat. 632; 48 U. S. C. 373–375, 378), April 13, 1926 (44 Stat. 243; 48 U. S. C. 379, 380, 380a), and July 11, 1956 (70 Stat. 528; 48 U. S. C. 371c and 375).

2. Section 65.3b is revised to read as follows:

§ 65.3b *Failure to file notice.* Unless a notice of the claim is filed within the time prescribed in § 65.3, no credit shall be given for residence and cultivation had prior to the filing of notice or application to make entry, whichever is earliest.

3. The title and text of § 65.8 are amended to read as follows:

§ 65.8 *Applications for entry.* (a) A homestead application must describe the lands desired, if surveyed, according to legal subdivisions as shown by the plat of survey, and, excepting that it must thus conform and that the lands must be contiguous, there is no restriction as to the shape of the tract which may be entered. Where a settlement was made and a location notice posted and filed for record before the extension of the surveys, the application should make reference thereto; it should be stated also to what extent the land applied for is different from that covered by the notice; and the settler may not abandon all of the subdivisions covered by the location unless a showing is made which would justify amendment of his claim.

(b) A homestead application must describe the lands desired, if unsurveyed, by metes and bounds with relation to some natural or permanent monuments, and give the approximate latitude and longitude and otherwise with as much certainty as possible without actual survey. Reference should be made to the serial number of the notice of settlement previously filed. If there has been any material deviation made in the description of the land claimed, a full explanation must be given of the reason for such deviation. A homestead application for unsurveyed lands must be accompanied by the settler's final or commutation homestead proof.

4. Section 65.20 is amended to read as follows:

§ 65.20 *Survey without expense to settler.* The land included in a settlement claim may be surveyed without expense to the settler, provided he submits, within five years from the date of the filing of notice of settlement claim in the land office, an application to enter on Form 4–007 and acceptable final or commuted homestead proof as required by § 65.23.

5. Section 65.21 is amended to read as follows:

§ 65.21 *Survey at expense of settler.* A settler who wishes to secure earlier action in the matter of survey may have a survey made at his own expense by a deputy surveyor appointed by the authorized officer of the Bureau of Land Management.

6. Section 65.22 is amended to read as follows:

§ 65.22 *Application to enter land included in special survey.* After a special survey has been made, in accordance with § 65.21, application to enter should be made as in the case of other settlements on surveyed lands.

7. Paragraph (a) of § 65.23 is amended to read as follows:

§ 65.23 *Submission of proof.* (a) Proof may be submitted without previous notice of intention by publication.

8. Paragraph (a) of § 65.25 is amended to read as follows:

§ 65.25 *Publication and posting.* (a) Where a special survey has been made, the notice of proof must give the survey number of the land, and other information required by § 60.3 of this chapter, and it must be published once a week for nine consecutive weeks, in accordance with § 106.14 of this chapter, at the expense of the applicant, in a newspaper designated by the manager as being one of general circulation nearest the land. Moreover, during the period of publication the entryman must keep a copy of the plat, and of his notice of having made proof, posted in a conspicuous place on the land.

(R. S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U. S. C. 1201, 48 U. S. C. 371)

HATFIELD CHILSON,
Acting Secretary of the Interior.

FEBRUARY 28, 1957.

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Circular Distribution List

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

CIRCULAR NO. 1972

Part 251—Airports and Aviation Fields

LEASING OF PUBLIC LANDS FOR AIRPORTS AND AVIATION FIELDS AND WITHDRAWALS OF SUCH LANDS FOR AIRPORT PURPOSES

AUTHORITY: §§ 251.1 to 251.23 issued under R. S. 2478, sec. 1, 45 Stat. 728, as amended; 43 U. S. C. 1201, 49 U. S. C. 211.

LEASING OF PUBLIC LANDS FOR AIRPORTS AND AVIATION FIELDS AND WITHDRAWALS OF SUCH LANDS FOR AIRPORT PURPOSES

§ 251.1 *Statutory authority.* The act of May 24, 1928 (45 Stat. 728; 49 U. S. C. 211–214), as amended by the act of August 16, 1941 (55 Stat. 621), authorizes the Secretary of the Interior in his discretion and under such regulations as he may prescribe, to lease for use as a public airport, any contiguous, unreserved and unappropriated public lands, not to exceed 2,560 acres in area. It also authorizes him to grant permission for the establishment of beacon lights and other air navigation facilities, except terminal airports, upon unreserved and unappropriated public lands and to withdraw such lands for such purposes.

§ 251.2 *Lands which may be leased.* Any contiguous unreserved and unappropriated public lands, surveyed or unsurveyed, not exceeding 2,560 acres in area, may be leased under the provisions of the act of May 24, 1928.

§ 251.3 *Prior valid rights.* All leases will be subject to valid existing rights initiated prior to the date the application for lease is filed.

§ 251.4 *Applications for lease.*[1] Applications shall be filed in the proper land office in the State or Territory, or for lands in a State in which there is no land office, shall be filed with the Bureau of Land Management, Washington 25, D. C., except the applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana; applications for lands in Nebraska or Kansas shall be filed in the land office at Cheyenne, Wyoming; and for lands in Oklahoma in the land office at Santa Fe, New Mexico. Applications will be limited to citizens of the United States, or associations of such citizens, to corporations organized under the laws of the United States or of any State or Territory thereof, and municipalities. No specific form of application is required, and no blanks will be furnished, but the application which must be signed by the applicant, but need not be under oath, should include in substance the following points:

(a) Applicant's name and post-office address.

(b) If a corporation, a certified copy of the articles of incorporation.

(c) If a city or town, evidence of authority of the mayor or other officer who may be authorized to execute such lease.

(d) Description of the land for which the lease is desired by legal subdivisions, if surveyed, and by metes and bounds, if unsurveyed.

§ 251.5 *Report by Administrator, Civil Aeronautics Administration; execution of lease.* Upon receipt of the application one copy will be referred to the Administrator, Civil Aeronautics Administration, for consideration as to what fuel facilities, lights, and other furnishings are necessary to meet the rating set by that department. After the Administrator, Civil Aeronautics Administration, has reported, a lease on Form 4–455 will be prepared and sent to the applicant for execution.

§ 251.6 *Lessee to make report within 6 months on airport equipment.* The lessee shall, within 6 months from the date of the lease, equip the airport as required by the Administrator, Civil Aeronautics Administration, and file a report thereof in the land office.

§ 251.7 *Inspection of airport by Civil Aeronautics Administration and report thereon.* At any time during the term of the lease the Administrator, Civil Aeronautics Administration, may have an inspection made of the airport, and if it does not comply with the ratings set

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

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by the Civil Aeronautics Administration that fact, with a statement as to wherein it fails, will be referred to the Bureau of Land Management for appropriate action.

§ 251.8 *Reasons for which lease may be canceled.* The authorized officer may, in his discretion, cancel a lease issued under the act of May 24, 1928, for any of the following reasons: If the lessee fails to use the leased premises or any part thereof, or uses it or any part thereof for a purpose foreign to the proper use, or shall fail to pay the annual rental or any part thereof, or shall fail to maintain the premises according to the ratings set by the Civil Aeronautics Administration, or shall fail to comply with the regulations in this part or the terms of the lease.

§ 251.9 *Period of lease; renewal thereof.* Leases under the act of May 24, 1928, shall be for a period not to exceed 20 years and may be renewed for like period.

§ 251.10 *Annual rental.* Every lessee under the act of May 24, 1928 (45 Stat. 728; 49 U. S. C. 211–214), as amended August 16, 1941 (55 Stat. 621), shall pay to the lessor an annual rental of not less than $10 for an area not exceeding 640 acres, and not less than $5 for each additional 640 acres or fraction thereof. The rental terms of each lease shall be subject to reconsideration and revision at 3-year intervals. The lessee shall be required to submit a report to the Bureau of Land Management, showing the facts as to the gross receipts within 90 days after each anniversary date of the lease. In the event the average annual gross receipts reported during any such interval from operations on the leased land, from all sources, exceed $5,000, the rentals for the succeeding interval or intervals may be increased to such reasonable amount as may be fixed by the authorized officer, but not exceeding 1 percent of such average. Due consideration will be given in fixing the rentals to all pertinent facts and circumstances, including other holdings of the lessee, if any, in connection with which the receipts are obtained. The first annual rental payment shall be made when the application is filed in the land office. All subsequent payments shall be paid in advance on or before the anniversary date of the lease.

§ 251.11 *Use of airport by Government departments and agencies; control for military purposes.* The lessee shall agree that all departments and agencies of the United States operating aircraft shall have free and unrestricted use of the airport and with the approval of the Bureau of Land Management, any departments or agencies shall have the right to erect and install therein such structures and improvements as are deemed advisable. Whenever the President may deem it necessary for military purposes, the Secretary of the Army may assume full control of the airports.

§ 251.12 *Regulations governing use of the airport.* The lessee will submit to the Administrator, Civil Aeronautics Administration, for his approval, regulations to govern the use of the airport.

§ 251.13 *Establishment of beacon lights, etc.; withdrawals therefor by the Bureau of Land Management.* Government departments and agencies operating aircraft may be granted permission to establish beacon lights and other navigation facilities, except terminal airports, on tracts of unreserved and unappropriated public lands of the United States of appropriate size, on application therefor, under the rules and regulations prescribed by §§ 251.1 to 251.12, except no rental will be charged. They will be withdrawn by the Bureau of Land Management, for that purpose on a sufficient showing of the necessity of a withdrawal for such purpose. However, to insure uniformity and centralized control over such facilities, all such applications will be referred to the Administrator, Civil Aeronautics Administration for consideration and comment.

§ 251.14 *Segregation of land by application for lease; airport withdrawals which may be made by the Bureau of Land Management.* While an application for a lease of not exceeding 2,560 acres of public lands for a public aviation field under sections 1, 2, and 3 of the act of May 24, 1928 (45 Stat. 728, 729; 49 U. S. C. 211–213), will operate as a segregation of the lands described therein from the time such application is filed in the proper land office, no authority is given the Bureau to withdraw public lands for terminal airports. The Bureau may, however, withdraw such lands for beacon lights or other air navigation purposes, including emergency or intermediate landing fields between terminal airports. Such withdrawals may be made on his own motion or at the instance of the Civil Aeronautics Administration or other Federal agencies, or lessees of terminal airports, or the applicants for such leases.

§ 251.15 *Withdrawals for airport terminals to be made by public land order.* Prior to the approval of the act of May 24, 1928, public lands were subject to withdrawal by the President for public purposes, and the authority of the President to make such withdrawals is in no manner restricted by the act of May 24, 1928. Where, therefore, unappropriated public lands are desired by the Civil Aeronautics Administration or other Federal agencies for airport terminals, requests for their withdrawal by a public land order may be submitted to the appropriate Land Office of the Bureau of Land Management, for consideration. All requests for withdrawal should specifically state whether the area is desired for beacon lights, emergency or intermediate landing fields, or terminal airports.

§ 251.16 *Appeals.* Any party aggrieved by any action taken under this part may appeal to the Secretary of the Interior pursuant to Part 221 of this chapter.

USE FOR AIRPORT PURPOSES BY PUBLIC AGENCIES UNDER FEDERAL AIRPORT ACT OF MAY 13, 1946, OF LANDS UNDER JURISDICTION OF THE DEPARTMENT OF THE INTERIOR

§ 251.17 *Statutory authority.* (a) Section 16 of the Federal Airport Act of May 13, 1946[1] (60 Stat. 179; 49 U. S. C. 1115) provides that whenever the Administrator of Civil Aeronautics determines that the use of any lands owned or controlled by the United States is reasonably necessary for carrying out a project under the act, or for the operation of any public airport, he shall file with the head of the Department or agency having control of such lands a request that such property interest therein as he may deem necessary be conveyed to the public agency sponsoring the project in question or owning or controlling the airport.

(b) Upon receipt of the request from the Administrator of Civil Aeronautics, the head of the Department or agency having control of the lands in question is directed to determine whether the requested conveyance is inconsistent with the needs of the Department or agency and to notify the Administrator of his determination within a period of four months after receipt of the Administrator's request. Upon the determination of the head of the Department or agency that it is not so inconsistent, he is authorized and directed, with the approval of the President and the Attorney General of the United States, and without any expense to the United States, to perform any acts and to execute any instruments necessary to make the conveyance requested.

§ 251.18 *Definitions.* As used in the regulations in this part, unless the context requires otherwise, the following terms shall have the meaning indicated:

(a) "The act" means the Federal Airport Act of May 13, 1946 (60 Stat. 179; 49 U. S. C. 1101).

(b) "Secretary" means the Secretary of the Interior or his duly authorized representative.

(c) "Director" means the Director of the Bureau of Land Management or his duly authorized representative.

(d) "Administrator" means the Administrator of Civil Aeronautics or his duly authorized representative.

(e) "Applicant" means any public agency as defined in 14 CFR 555.4, which, either individually or jointly with one or more other such public agencies, submits to the Administrator, an application requesting that public lands or interests therein, be transferred to such applicant under the Federal Airport Act.

[1] The regulations of the Civil Aeronautics Administration under this act are found in 14 CFR, Part 555.

(f) "Property interest" means the title to or any other interest in land or any easement through or other interest in air space.

(g) "Instrument of transfer" includes a patent, deed, lease or other instrument transferring a property interest.

§ 251.19 *Request by Administrator for transfer of property interest.* Each request by the Administrator in behalf of the applicant for the transfer of a property interest in public lands or other federally owned lands under the jurisdiction of the Department of the Interior should be addressed to the Bureau of Land Management, should be in duplicate, and should contain the following:

(a) A copy of the application filed by the requesting public agency with the Administrator.

(b) A description of the land, if surveyed, by legal subdivisions, specifying section, township, and range. Unsurveyed land should be described by metes and bounds with a tie to a corner of the public-land surveys if within two miles; otherwise a tie should be made to some prominent topographic feature and the approximate latitude and longitude should be given when practicable.

§ 251.20 *Action on the request.* (a) The Secretary will determine whether the requested transfer is inconsistent with the needs of the Department or any agency thereof, and if it is not, the covenants, terms and conditions, if any under which such transfer should be made. Any such conveyance will be made subject to valid existing rights of record, and to those disclosed as a result of posting, publication, or otherwise.

(b) Ordinarily where the lands involved are situated within a national park or monument or within an Indian reservation the transfer will not be authorized.

§ 251.21 *Publication and posting required where fee title to public lands is to be transferred.* Before a transfer of fee title to public lands is made, the Bureau of Land Management will require the applicant to publish, at its own expense, in a newspaper of general circulation in the county in which the land is situated, a notice stating that a request has been made by the Administrator on behalf of the applicant (giving its name and address) to acquire title to public lands (describing them) under the act, for the purpose of carrying out a project under the act, or for the operation of a public airport, as the case may be, and that the purpose of the notice is to give persons claiming an interest in the land or having bona fide objections to the proposed transfer an opportunity to file within 30 days after the date of the first publication, a protest, together with evidence that the protest has been served on the applicant. If the notice is published in a daily paper, the notice should be published for four consecutive weeks in the Wednesday issue, if a weekly, in four consecutive issues, and if a semi-weekly or tri-weekly, in any of the issues on the same day each week for four consecutive weeks. The notice will also be posted during the entire period of publication in the land office, Bureau of Land Management, for the district in which the lands are situated, or if there is no land office for the State, in the office of the Director, Washington 25, D. C. No transfer will be made until proof of publication and posting of the notice has been filed.

§ 251.22 *Special provisions in the instrument of transfer.* Each instrument of transfer made hereunder of fee title or a lesser estate in the lands shall contain:

The covenants, terms and conditions requested by the Administrator, as well as those required for the protection of the Department of the Interior or any agency thereof.

This Circular replaces Circulars:
1161, 1496, 1498, 1540, 1694, 1867

13819

TITLE 43--PUBLIC LANDS: INTERIOR

Chapter I--Bureau of Land Management, Department of the Interior

CIRCULAR 1973

Part 146—Exchanges of Privately Owned Lands Under Taylor Grazing Act

AUTHORITY: §§ 146.1 to 146.8 issued under sec. 2, 48 Stat. 1270; 43 U. S. C. 315a.

SOURCE: §§ 146.1 to 146.8 appear at 19 F. R. 8928, Dec. 23, 1954.

CROSS REFERENCES: For exchanges by States under the Taylor Grazing Act, see Part 147 of this chapter. For exchanges for migratory bird or other wildlife refuges, see Part 251 of this chapter. For exchanges for recreational purposes, see Part 254 of this chapter. For exchanges for the benefit of particular States, see Part 152 of this chapter. For exchanges for the consolidation or extension of Indian reservations or Indian holdings, see Part 149 of this chapter. For exchanges for the consolidation or extension of national forests, see Part 148 of this chapter. For disposition of conflicting applications within the discretionary power of the Secretary of the Interior, see § 101.8 of this chapter. For exchanges of revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands, Oregon, see §§ 115.94–115.111 of this chapter. For exchanges to eliminate private holdings from national parks and national monuments, see Part 150 of this chapter. For exchanges within reclamation projects, see §§ 230.22 and 230.23 of this chapter.

§ 146.1 *Authority.* (a) Subsections (b) and (d) of section 8 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1272), as amended by section 3 of the act of June 26, 1936 (49 Stat. 1976; 43 U. S. C. 315g), authorize the Secretary of the Interior when the public interests will be benefited thereby to accept on behalf of the United States title to any privately owned land within or without the boundaries of a grazing district and in exchange therefor to issue a patent for not to exceed an equal value of surveyed grazing district land or of unreserved surveyed public land in the same State or within a distance of not more than 50 miles within the adjoining State nearest the privately owned land. Either party to an exchange may make reservations of minerals, easements, or rights of use. Whether an exchange will benefit the public interest shall be determined by the officer authorized to act.

§ 146.2 *Application.*[1] (a) Persons, firms, or corporations desiring to exchange lands pursuant to § 146.1 should file in the land office having jurisdiction over the selected lands or in the Washington Office of the Bureau of Land Management, when there is no land office within the State, an application in duplicate, on Form 4–728, or its equivalent, describing the offered and the selected land by legal subdivisions of the public land surveys. The application must contain the full name and post-office address of the applicant and must state whether any reservation of minerals, easements, or other rights in or to the offered lands are outstanding in third parties or desired by the applicant, and what use the applicant will make of such rights. It must also contain the reservations or easements which are acceptable to the applicant and are to be made by the United States affecting the selected lands.

(b) The applicant must be legally capable of consummating the exchange and the application must state that he is the owner of the lands offered in exchange, and that such offered lands are not the basis of any other exchange.

(c) The application must also include a corroborated statement relative to springs and water holes on the selected lands, in accordance with §§ 292.1 to 292.9 of this chapter. The application must state that the value of the selected land does not exceed the value of the offered land.

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

(d) No filing fees are required. However, the applicant shall pay one-half of the advertising cost.

§ 146.3 *Determination of values; publication of notice of exchange.* (a) The authorized officer shall determine the values of the offered and selected land, taking into consideration the value of any reservation of minerals, easements or other rights which are outstanding in third parties or to be made by the applicant or by the United States. If such officer determines that the value of the selected land exceeds the value of the offered land he will so inform the applicant and afford him the opportunity of bringing the exchange within the provisions of the law.

(b) The authorized officer, if he has no basis to determine that the value of the selected land exceeds the value of the offered lands, that the exchange is not in the public interest, or that there is other reason not to do so, shall direct publication of the notice of exchange in the newspaper or newspapers designated by him, and require the applicant to submit proof of publication and comply with the provisions of §§ 146.4, 146.5 and 146.7. However, until patent to the selected land is issued, the authorized officer may at any time determine that the exchange should not be completed, and the applicant has no contractual or other rights against the United States, and no action taken will create any contractual or other obligation of the United States other than an obligation to pay one-half the cost of publication.

§ 146.4 *Notice for publication and designation of newspaper; cost and proof of publication.* The notice of publication must give the name and post-office address of the applicant, the serial number and date of the application, the act under which the application is filed and a description of the offered and selected lands in terms of legal subdivisions of the public land surveys, and must state that all persons asserting a claim to the selected lands or having bona fide objections to the exchange may file their protests or other objections in the office designated in the notice, together with

evidence that a copy of such protest or objection has been served upon the applicant. The notice must be published once a week for 4 consecutive weeks in a designated newspaper of general circulation in the county or counties in which the offered lands are situated and in the same manner in a newspaper of general circulation in the county or counties in which the selected lands are situated. One-half of the cost of publication of the notice shall be paid by the applicant. Each newspaper will collect that portion of the cost of publication from the applicant and submit proper vouchers to the United States for the remaining one-half of such cost. Proof of publication of notice shall consist of a statement by the publisher or foreman or other authorized employee of the newspaper, specifying the dates of publication, and attaching thereto a copy of the notice as published.

§ 146.5 *Deed to United States.* The applicant shall submit a warranty deed of conveyance of the offered land to the United States, properly executed, acknowledged, and recorded in accordance with the laws of the State in which the lands are situated together with satisfactory evidence of title, as required by § 146.6, showing that he was vested with a valid unencumbered title to the land at the time of the recordation of the deed. Revenue stamps required by Federal and State law must be affixed to the deed and canceled. The deed should recite that it is made "for and in consideration of the exchange of certain lands, as authorized by section 8 of the act of June 28, 1934 (48 Stat. 1272), as amended by section 3 of the act of June 26, 1936 (49 Stat. 1976)". A deed executed by an individual grantor must disclose his marital status. If married, the spouse of the grantor must join in the execution of the deed to bar any right of courtesy, dower, community interest or any other claim to the land conveyed, or it must be fully shown that under the laws of the State in which the conveyed land is situated, the grantor's spouse has no interest present or prospective in the land. A deed executed by a corporation must recite that it was executed pursuant to a resolution or order of its board of directors, or other governing body, and a copy of such resolution or order must accompany the deed. The corporate seal must be affixed to both instruments.

§ 146.6 *Evidence of title; policy of title insurance or certificate of title preferred.* (a) Consummation of an exchange is expedited by applicant's submission, as evidence of title to the offered land, of a policy of title insurance in the form approved by the Department of the Interior, Form 4–1202, or a certificate of title, issued by a qualified title insurance company which is acceptable to the Department of the Interior. Such evidence of title is therefore preferred. However, an abstract of title is also acceptable. The evidence of title must show and certify that title to the offered land has vested in the United States free and clear of all liens, encumbrances and assessments which may operate as liens, as of the date of recordation of the deed to the United States.

(b) A policy of title insurance or a certificate of title must be issued by a title insurance company authorized by law to issue such policies or certificates, and other evidence of title, if furnished, must be prepared and authenticated by an abstracter or abstract company or by the recorder of deeds or other proper officer of the State under his official seal.

§ 146.7 *Taxes.* In case taxes which have been assessed or levied on the offered lands constitute liens against the lands although such taxes are not due and payable at the time of the recordation of the deed to the United States, the applicant may furnish a bond with a qualified surety for double the amount of taxes paid on the land for the previous year, or, in lieu of a bond, a cash deposit in like amount, to secure the payment of such taxes. When proper evidence of payment in full of such taxes is furnished by the applicant, liability under the bond will be terminated or the cash deposit will be returned to him.

§ 146.8 *Approval of exchange; rules of practice to be followed.* (a) The proof of publication, conveyance, title evidence and other evidence furnished by the applicant will be examined, and if found satisfactory and no valid objection appearing to the consummation of the exchange, title to the offered land will be accepted and patent for the selected land will issue.

(b) Protests against exchanges when filed in the proper office of the Bureau of Land Management will be considered and determined and the applicant and protestant will be notified accordingly.

(c) Any person aggrieved by any action of the manager or the area administrator on an application for exchange, or a protest against such an application, may appeal to the Director, Bureau of Land Management, and from his decision to the Secretary of the Interior, pursuant to the Rules of Practice, Part 221 of this chapter.

(d) Should the application for exchange be finally rejected the evidence of title will be returned to the applicant and a quitclaim deed for the land conveyed to the United States will be issued under section 6 of the act of April 28, 1930 (46 Stat. 257; 43 U. S. C. 872).

This Circular replaces Circulars No. 1814, 1831 INT.-DUP. SEC., WASH., D.C.
13906

TITLE 43--PUBLIC LANDS: INTERIOR

Chapter I--Bureau of Land Management, Department of the Interior

CIRCULAR 1973

Part 146—Exchanges of Privately Owned Lands Under Taylor Grazing Act

AUTHORITY: §§ 146.1 to 146.8 issued under sec. 2, 48 Stat. 1270; 43 U. S. C. 315a.

SOURCE: §§ 146.1 to 146.8 appear at 19 F. R. 8928, Dec. 23, 1954.

CROSS REFERENCES: For exchanges by States under the Taylor Grazing Act, see Part 147 of this chapter. For exchanges for migratory bird or other wildlife refuges, see Part 151 of this chapter. For exchanges for recreational purposes, see Part 254 of this chapter. For exchanges for the benefit of particular States, see Part 152 of this chapter. For exchanges for the consolidation or extension of Indian reservations or Indian holdings, see Part 149 of this chapter. For exchanges for the consolidation or extension of national forests, see Part 148 of this chapter. For disposition of conflicting applications within the discretionary power of the Secretary of the Interior, see § 101.8 of this chapter. For exchanges of revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands, Oregon, see §§ 115.94–115.111 of this chapter. For exchanges to eliminate private holdings from national parks and national monuments, see Part 150 of this chapter. For exchanges within reclamation projects, see §§ 230.22 and 230.23 of this chapter.

§ 146.1 *Authority.* (a) Subsections (b) and (d) of section 8 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1272), as amended by section 3 of the act of June 26, 1936 (49 Stat. 1976; 43 U. S. C. 315g), authorize the Secretary of the Interior when the public interests will be benefited thereby to accept on behalf of the United States title to any privately owned land within or without the boundaries of a grazing district and in exchange therefor to issue a patent for not to exceed an equal value of surveyed grazing district land or of unreserved surveyed public land in the same State or within a distance of not more than 50 miles within the adjoining State nearest the privately owned land. Either party to an exchange may make reservations of minerals, easements, or rights of use. Whether an exchange will benefit the public interest shall be determined by the officer authorized to act.

§ 146.2 *Application.*[1] (a) Persons, firms, or corporations desiring to exchange lands pursuant to § 146.1 should file in the land office having jurisdiction over the selected lands or in the Washington Office of the Bureau of Land Management, when there is no land office within the State, an application in duplicate, on Form 4–728, or its equivalent, describing the offered and the selected land by legal subdivisions of the public land surveys. The application must contain the full name and post-office address of the applicant and must state whether any reservation of minerals, easements, or other rights in or to the offered lands are outstanding in third parties or desired by the applicant, and what use the applicant will make of such rights. It must also contain the reservations or easements which are acceptable to the applicant and are to be made by the United States affecting the selected lands.

(b) The applicant must be legally capable of consummating the exchange and the application must state that he is the owner of the lands offered in exchange, and that such offered lands are not the basis of any other exchange.

(c) The application must also include a corroborated statement relative to springs and water holes on the selected lands, in accordance with §§ 292.1 to 292.9 of this chapter. The application must state that the value of the selected land does not exceed the value of the offered land.

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

(d) No filing fees are required. However, the applicant shall pay one-half of the advertising cost.

§ 146.3 *Determination of values; publication of notice of exchange.* (a) The authorized officer shall determine the values of the offered and selected land, taking into consideration the value of any reservation of minerals, easements or other rights which are outstanding in third parties or to be made by the applicant or by the United States. If such officer determines that the value of the selected land exceeds the value of the offered land he will so inform the applicant and afford him the opportunity of bringing the exchange within the provisions of the law.

(b) The authorized officer, if he has no basis to determine that the value of the selected land exceeds the value of the offered lands, that the exchange is not in the public interest, or that there is other reason not to do so, shall direct publication of the notice of exchange in the newspaper or newspapers designated by him, and require the applicant to submit proof of publication and comply with the provisions of §§ 146.4, 146.5 and 146.7. However, until patent to the selected land is issued, the authorized officer may at any time determine that the exchange should not be completed, and the applicant has no contractual or other rights against the United States, and no action taken will create any contractual or other obligation of the United States other than an obligation to pay one-half the cost of publication.

§ 146.4 *Notice for publication and designation of newspaper; cost and proof of publication.* The notice of publication must give the name and post-office address of the applicant, the serial number and date of the application, the act under which the application is filed and a description of the offered and selected lands in terms of legal subdivisions of the public land surveys, and must state that all persons asserting a claim to the selected lands or having bona fide objections to the exchange may file their protests or other objections in the office designated in the notice, together with

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter S—Rights-of-Way

[Circular 1974]

PART 244—RIGHTS-OF-WAY OTHER THAN FOR RAILROAD PURPOSES AND FOR LOGGING ROADS ON THE OREGON AND CALIFORNIA AND COOS BAY REVESTED LANDS

PROCEDURE WHEN RESERVED LAND IS INVOLVED

Section 244.59 is amended to read as follows:

§ 244.59 *Procedure when reserved land is involved; rights-of-way over Revested and Reconveyed Lands.* (a) When a right-of-way is desired for the construction of a highway under R. S. 2477, over public land reserved for public uses, and such reserved land is under the jurisdiction of the Department of the Interior, and when a right-of-way is desired for the construction of a highway under R. S. 2477 over the Revested and Reconveyed Lands (see § 115.37 (d) of this chapter), an application should be made in accordance with § 244.3. Such application should be accompanied by a map, drawn on tracing linen, with two print copies thereof, showing the location of the proposed highway with relation to the smallest legal subdivisions of the lands affected.

(b) Where reserved lands are involved, no rights to establish or construct the highway will be acquired by reason of the filing of such application, unless and until the reservation shall have been revoked or modified so as to permit construction of the highway, subject to such terms and conditions, if any, as may be deemed reasonable and necessary for the adequate protection and utilization of the reserve.

(c) Where Revested and Reconveyed Lands are involved, no rights to establish or construct the highway will be acquired by reason of the filing of such application unless and until the authorized officer of the Bureau of Land Management shall grant permission to construct the highway, subject to such terms and conditions as he deems necessary for the adequate protection and utilization of the lands, and for the maintenance of the objectives of the act of August 28, 1937 (50 Stat. 874; 43 U. S. C. 1181a).

(R. S. 161, 453, 2428; 5 U. S. C. 22, 43 U. S. C. 2, 1201)

HATFIELD CHILSON,
Acting Secretary of the Interior.

APRIL 5, 1957.

[F. R. Doc. 57-2861; Filed, Apr. 11, 1957; 8:46 a. m.]

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

[Circular 1975]

PART 70—MINERAL LANDS; COAL PERMITS AND LEASES AND LICENSES FOR FREE USE OF COAL

MISCELLANEOUS AMENDMENTS

Sections 70.9, 70.13, 70.14 and 70.17 are amended; the text of § 70.24 is redesignated as paragraph (a) of that section and a new paragraph (b) is added thereto; § 70.25 is amended by adding new paragraphs (d) and (e) thereto, to read as follows:

§ 70.9 *Lease bond.* A compliance bond, in no event less than $1,000, with approved corporate surety (Form 4–1113), or the lessee's personal bond in similar amount (Form 4–1114), will be required prior to the issuance of a lease. Personal bonds must be accompanied by negotiable Federal securities in the amount of the bond. If the amount of the bond is fixed at $1,000, the lessee may, instead, furnish a bond on Form 4–1113 with two qualified individual sureties. Each surety must execute a statement showing that he is worth in real property not exempt from execution double the amount of the bond, over and above his just debts and liabilities, and that he is either a resident of the same State or Territory and the United States Judicial District as the principal on the bond, or of the Territory and the Judicial District in which the lands involved are located. There must also be furnished a certificate by a judge or clerk of a court of record, a United States Attorney, a United States Commisisoner, or United States postmaster, as to the identity, signature, and financial competency of the sureties. All bonds furnished with individual sureties will be examined every two years or at any other time when found advisable, and the principal on the bond will be required to furnish new statements of justification by the sureties and a new certificate of financial competency, and if such sureties are unable to qualify additional security will be required. The statement of justification required to be furnished by the sureties; and the certificate of competency should be on Form 4–215.

§ 70.13 *Notice of lease offer.* Notice of offer of lands or deposits for lease will be by publication once a week for four consecutive weeks, or for such other period as may be deemed advisable, in a newspaper of general circulation, published in the Territory of Alaska. The notice will show the time and place of sale, whether the sale will be at public auction or by sealed bids, the description of the land and the place where a detailed statement of the terms and conditions of the lease offer and the obligations of the successful bidder to pay for publication of that notice may be obtained. A copy of the notice will be posted in the appropriate land office during the period of publication. The detailed statement will set forth the terms and conditions of the sale, including the manner in which bids may be submitted, and statements (a) that the successful bidder will be required, prior to the issuance of a lease, to pay his proportionate share of the total cost of publication of the notice of lease offer, and that the successful bidder's share shall be that proportion of the total advertising cost, that the number of parcels of land awarded to him bears to the number of parcels for which high bidders are declared, and (b) that the Government reserves the right to reject any and all bids. If the sale is by public auction, the statement of terms and conditions of the sale will also specify that sealed bids will be accepted. If any bid be rejected, the deposit will be returned. The commission of any act of intimidation of bidders, or the combination of bidders to hinder or prevent biding is unlawful. See 18 U. S. C. 1860.

§ 70.14 *Sale; bidding requirements; action by successful bidder.* (a) When the sale is by public auction, before bidding is commenced by those persons present, the Manager or other officer conducting the sale will open and read to those persons the sealed bids received on or before the time set in the notice of lease offer. The successful bidder at a sale by public auction must on the day of sale deposit with the Manager or other officer conducting the sale and each bidder at a sale by sealed bid must submit with his bid, the following: Certified check, cashier's check, bank draft, money order or cash for one-fifth of the amount bid by him and a statement over the bidder's own signature with respect to citizenship and interests held, similar to that prescribed in § 70.11 (a) (2), (3) and (b).

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Circular Distribution List

(b) Upon receipt of the high bid at, and at the close of, an oral auction, or the opening of the sealed bids, the authorized officer, subject to his right to reject any and all bids, will award the lease to the successful bidder, who will be notified accordingly. If the land is surveyed, four copies of the lease will be sent to the successful bidder, who will be required within 30 days from receipt thereof to execute them, pay the balance of the bonus bid, the first year's rental, and the cost of publication of the notice of lease offer as specified in § 70.13, and file a bond as required by § 70.9. The lease will be dated as of the first day of the month following its issuance unless the successful bidder requests that it be dated as of the first day of the month of issuance. If the land is unsurveyed, the successful bidder will not be required to comply with the requirements of this subsection until the land has been surveyed and the plat of such survey accepted and officially filed. Such survey will be at the expense of the Government. If the bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under the Alaska Coal Leasing Act. If the lease awarded to the successful bidder is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease. If the bidder dies before the lease is issued, there must be furnished satisfactory evidence such as specified in § 70.24 (b), in order that the Manager of the appropriate land office may determine to whom the lease may be issued.

§ 70.17 *Relinquishment of lease.* Upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease or any legal subdivision thereof. A relinquishment must be filed in duplicate in the appropriate land office. Upon its acceptance it shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to provide for the preservation of any mines or productive works or permanent improvements on the leased lands in accordance with the regulations and terms of the lease.

§ 70.24 *Reward for discovery.* * * *

(b) If the permittee dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed; if probate has been completed, or is not required, to the heirs or devisees; and if there are minor heirs or devisees, to their legal guardian or trustee in his name, provided there is filed in all cases the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person, who as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign such forms.

(ii) Evidence that the heirs or devisees are the heirs or devisees of the deceased permittee and are the only heirs or devisees of the deceased.

(iii) A statement over the signature of each heir or devisee concerning citizenship and holdings similar to that required by § 70.11 (a) (2) and (3), except where the heir or devisee is a minor in which case the statement should be signed by the executor or administrator in behalf of the heir or devisee and be accompanied by evidence that the executor or administrator is authorized to sign the statement.

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the permittee and citing the provisions of the law of the deceased's last domicile showing no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to citizenship and holdings similar to that required by § 70.11 (a) (2) and (3), except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee and be accompanied by evidence that he is authorized to sign in behalf of the minor.

(3) Where there is a legal guardian or trustee:

(i) A certified copy of the court order authorizing the guardian or trustee to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; statements by the guardian or trustee as to the holdings of each of the minors and as to his own citizenship and holdings, including his holdings for the benefit of other minors similar to that required by § 70.11 (a) (2) and (3).

§ 70.25 *Transfers, including subleases.* * * *

(d) No transfer will be approved if the transferee is not qualified to take and hold a permit or lease or if his bond is insufficient. A minor, except a minor heir or devisee of a permittee or lessee, is not qualified to hold a permit or lease and a transfer to a minor will not be approved.

(e) In order for the heirs or devisees of a deceased holder of a permit or lease, an operating agreement, or a royalty interest in a permit or lease, to be recognized by the Secretary as the holder of the permit or lease, agreement or interest, there must be furnished the appropriate showing required under § 70.24 (b).

(Sec. 17, 38 Stat. 745; 48 U. S. C. 451)

HATFIELD CHILSON,
Acting Secretary of the Interior.

APRIL 5, 1957.

[F. R. Doc. 57-2862; Filed, Apr. 11, 1957; 8:46 a. m.]

TITLE 43--PUBLIC LANDS: INTERIOR

Chapter I--Bureau of Land Management, Department of the Interior

CIRCULAR 1996

Part 280 - General Trespass Regulations 1/

[illegible] WHEN PRESCRIBED BY [illegible] LAW

Sec.
[illegible] Measure of damages to be applied.

[illegible] WHEN NOT PRESCRIBED BY [illegible] LAW

[illegible]

[illegible] MUST BE MADE [illegible] ACCORDANCE OF [illegible] LAWS, [illegible]

[illegible] Coal [illegible] unwillingness, losses, or [illegible]

[illegible] Coal [illegible] willful blades of [illegible]

PROCEDURE [illegible] DAMAGE CLAIMS

[illegible] Coal [illegible] license fees to [illegible] [illegible] and [illegible]

COAL MINING [illegible] OTHER OWNERS

[illegible] Right of [illegible] to mine [illegible] for [illegible]

[illegible] CLAIMS ON [illegible] PATENTED

Sec.
[illegible] When [illegible] may be [illegible] or a [illegible] issued, [illegible]

[illegible] Natural [illegible]

[illegible] [illegible] at 19 F. R. [illegible]

[illegible] in national [illegible] and Memorials [illegible] of [illegible] chapter.

1/ In addition to [illegible] trespass on the public lands, as [illegible] this part, persons responsible for such trespasses may be prosecuted criminally under any applicable Federal [illegible] prescribed by the Federal [illegible]

[illegible] C. 1852, 1853.
[illegible] U. S. C. 1856.
[illegible] U. S. C. 1851.

MEASURE OF DAMAGES, WHEN PRESCRIBED BY STATE LAW

§ 280.1 *Measure of damages to be applied.* The rule of damages to be applied in cases of timber, coal, oil, and other trespass in accordance with the decision of the Supreme Court of the United States in the case of Mason et al. v. United States (260 U. S. 545, 67 L. ed. 398), will be the measure of damages prescribed by the laws of the State in which the trespass is committed.

MEASURE OF DAMAGES, WHEN NOT PRESCRIBED BY STATE LAW

§ 280.2 *Timber trespass.* For timber trespass in a State where there is no State law governing such trespass, the measure of damages will be as follows:

(a) Where the trespass is willful the full value of the property at the time and place of demand, or of suit brought, with no deduction for labor and expense.

(b) In case of innocent trespasses neither the trespassers nor their transferees shall be required to pay more than the stumpage value, or the value of the timber as standing trees taken by them, in damages to the Government.

(c) In case of a purchase without notice of a wrong from a willful trespasser, the value at the time of purchase.

§ 280.3 *Turpentine trespass.* For turpentine trespass in a State where there is no State law governing such trespass, the measure of damages will be as follows:

(a) Innocent trespass: Value of the tree and injury done to the tree. United States v. Taylor (35 Fed. 488).

(b) Willful trespass: Value of the product manufactured from the crude turpentine by the settler, or any person under whose possession same may have come, without credit for labor bestowed on the turpentine by the wrongdoer. Naval Stores Co. v. United States (153 U. S. 264, 38 L. ed. 714).

§ 280.4 *Coal trespass.* (a) For coal trespass in a State where there is no State law governing such trespass, the measure of damages will be as follows:

(1) Measure of damages is the same as in the case of oil. Bunker Mining and Smelting Co. v. Alta Mining and Smelting Co. (243 U. S. 426, 58 L. ed. 841); Barnett Mining Co. v. Perry Consolidated Mining Co. (122 Fed. 160).

§ 280.5 *Oil trespass.* For oil trespass in a State where there is no State law governing such trespass, the measure of damages will be as follows:

(a) Innocent trespass: Value of oil taken, less amount of expense incurred in taking the same.

(b) Willful trespass: Value of the oil taken without credit or deduction for the expense incurred in the wrongdoer's getting it. Mason v. United States (115 Fed. 136).

§ 280.6 *Coal trespass.* For coal trespass in a State where there is no State law governing such trespass, the measure of damages will be as follows:

(a) For innocent trespass, payment must be made for the value of the coal in place before severance. United States v. Yellowstone Mining Company (147 Fed. 455).

(b) For willful trespass payment is to be made for the full value of the coal at the time of conversion without deduction for labor expended as separate expense incurred in removing and marketing the coal. Alberta Red Pine Mining Company v. Stranger Creek Mining Company (108 Fed. 761). The burden of proof of trespass to be adjudged to be willful, rather whether of preponderate evidence or the innocent and good faith of the trespasser. United States v. Old Gold and Chief Consolidated (160 Fed. 37).

(b) Upon receipt of the high bid at and at the close of an oral auction, or the opening of the sealed bids, the authorized officer, subject to his right to reject any and all bids, will award the lease to the successful bidder, who will be notified accordingly. If the land is surveyed, four copies of the lease will be sent to the successful bidder, who will be required within 30 days from receipt thereof to execute them, pay the balance of the bonus bid, the first year's rental, and the cost of publication of the notice of lease offer as specified in § 70.13, and file a bond as required by § 70.9. The lease will be dated as of the first day of the month following its issuance unless the successful bidder requests that it be dated as of the first day of the month of issuance. If the land is unsurveyed, the successful bidder will not be required to comply with the requirements of this subsection until the land has been surveyed and a plat of such survey accepted and officially filed. Such survey will be at the expense of the Government. If the bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other moneys under the Alaska Coal Leasing Act. If the lease awarded to the successful bidder is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease. If the bidder does not file the lease in time, there must be furnished satisfactory evidence such as provided in § 70.24 (b), in order that the Manager of the appropriate land office may determine to whom the lease may be issued.

§ 70.17 *Relinquishment of lease.* Upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease or any legal subdivision thereof. A relinquishment must be filed in duplicate in the appropriate land office. Upon its acceptance it shall be effective as of the date it is filed, subject to the continued liability of the lessee and his surety to make payment of all accrued rentals and royalties and to provide for the preservation of any mines or productive wells or permanent improvements on leased lands in accordance with the conditions and terms of the lease.

§ 70.24 *Reward for discovery.* * * *

(b) If the permittee dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed; if probate has been completed, or is not required, to the heirs or devisees; and if there are minor heirs or devisees, to their legal guardian or trustee in his name, provided there is filed in all cases the following information:

(1) Where probate of the estate has been completed:

(i) Evidence that the person, who as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign such forms.

(ii) Evidence that the heirs or devisees are the heirs or devisees of the deceased permittee and are the only heirs or devisees of the deceased.

(iii) A statement over the signature of each heir or devisee concerning citizenship and holdings similar to that required by § 70.11 (a) (2) and (3), except where the heir or devisee is a minor in which case the statement should be signed by the executor or administrator in behalf of the heir or devisee and be accompanied by evidence that the executor or administrator is authorized to sign the statement.

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the permittee and within the provisions of the law of the deceased's last domicile showing no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to citizenship and holdings similar to that required by § 70.11 (a) (2) and (3), except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee and be accompanied by evidence that he is authorized to sign in behalf of the minor.

(3) Where there is a legal guardian or trustee:

(i) A certified copy of the court order authorizing the guardian or trustee to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; statements by the guardian or trustee as to the holdings of each of the minors and as to his own citizenship and holdings, including his holdings for the benefit of other minors similar to that required by § 70.11 (a) (2) and (3).

§ 70.25 *Transfers, including sublease.* * * *

(d) No transfer will be approved if the transferee is not qualified to take and hold a permit or lease or if his bond is insufficient. A minor, except a minor heir or devisee of a permittee or lessee, is not qualified to hold a permit or lease and a transfer to a minor will not be approved.

(e) In order for the heirs or devisees of a deceased holder of a permit or lease, an operating agreement, or a royalty interest in a permit or lease, to be recognized by the Secretary as the holder of the permit or lease, agreement or interest, there must be furnished the appropriate showing required under § 70.24 (b).

(Sec. 17, 30 Stat. 742; 48 U. S. C. 451)

HARRISON CHILSON,
Acting Secretary of the Interior.

APRIL 5, 1957.

[F. R. Doc. 57-2802; Filed, Apr. 11, 1957; 8:48 a. m.]

TITLE 43--PUBLIC LANDS: INTERIOR

Chapter I--Bureau of Land Management, Department of the Interior

CIRCULAR 1976

Part 288 - General Trespass Regulations 1/

AUTHORITY: §§ 288.1 to 288.12 issued under R. S. 2478; 43 U. S. C. 1201.

SOURCE: §§ 288.1 to 288.12 appear at 19 F. R. 9155, Dec. 23, 1954.

CROSS REFERENCES: For trespass in national forests, see Parks, Forests, and Memorials, 36 CFR Part 261. For unlawful enclosures or occupancy, see Part 289 of this chapter.

[1] In addition to liability for trespass on the public lands, as indicated in this part, persons responsible for such trespass may be prosecuted criminally under any applicable Federal law. Penalties are prescribed by the following statutes:
Timber trespass. 18 U. S. C. 1852, 1853.
Turpentine trespass. 18 U. S. C. 1854.
Coal trespass. 18 U. S. C. 1851.

MEASURE OF DAMAGES, WHEN PRESCRIBED BY STATE LAW

§ 288.1 *Measure of damages to be applied.* The rule of damages to be applied in cases of timber, coal, oil, and other trespass in accordance with the decision of the Supreme Court of the United States in the case of Mason et al. v. United States (260 U. S. 545, 67 L. ed. 396), will be the measure of damages prescribed by the laws of the State in which the trespass is committed.

MEASURE OF DAMAGES, WHEN NOT PRESCRIBED BY STATE LAW

§ 288.2 *Timber trespass.* For timber trespass in a State where there is no State law governing such trespass, the measure of damages will be as follows:

(a) Where the trespass is willful, the full value of the property at the time and place of demand, or of suit brought, with no deduction for labor and expense.

(b) In case of innocent trespasses neither the trespassers nor their transferees shall be required to pay more than the stumpage value, or the value of the timber in standing trees taken by them, as damages to the Government.

(c) In case of a purchase without notice of wrong from a willful trespasser, the value at the time of purchase.

§ 288.3 *Turpentine trespass.* For turpentine trespass in a State where there is no State law governing such trespass, the measure of damages will be as follows:

(a) Innocent trespass: Value of the gum and injury done to the trees. United States v. Taylor (35 Fed. 484).

(b) Willful trespass: Value of the product manufactured from the crude turpentine by the settler, or any person into whose possession same may have passed, without credit for labor bestowed on the turpentine by the wrongdoer. Union Naval Stores Co. v. United States (240 U. S. 284, 60 L. ed. 644).

§ 288.4 *Ores trespass.* (a) For ores trespass in a State where there is no State law governing such trespass, the measure of damages will be as follows:

(1) Measure of damages is the same as in the case of coal. Benson Mining and Smelting Co. v. Alta Mining and Smelting Co. (145 U. S. 428, 36 L. ed. 762); Durant Mining Co. v. Percy Consolidated Mining Co. (93 Fed. 166).

§ 288.5 *Oil trespass.* For oil trespass in a State where there is no State law governing such trespass, the measure of damages will be as follows:

(a) Innocent trespass: Value of oil taken, less amount of expense incurred in taking the same.

(b) Willful trespass: Value of the oil taken without credit or deduction for the expense incurred by the wrongdoers in getting it. Mason v. United States (273 Fed. 135).

§ 288.6 *Coal trespass.* For coal trespass in a State where there is no State law governing such trespass, the measure of damages will be as follows:

(a) For innocent trespass, payment must be made for the value of the coal in place before severance. United States v. Homestake Mining Company (117 Fed. 481).

(b) For willful trespass, payment must be made for the full value of the coal at the time of conversion without deduction for labor bestowed or expense incurred in removing and marketing the coal. Liberty Bell Gold Mining Company v. Smuggler-Union Mining Company (203 Fed. 795). The mining of coal in trespass is presumed to be willful, in the absence of persuasive evidence of the innocence and good faith of the trespasser. United States v. Ute Coal and Coke Company (158 Fed. 20).

BASIS ON WHICH PAYMENT MUST BE MADE FOR COAL MINED PRIOR TO ISSUANCE OF PERMIT, LEASE, OR LICENSE

§ 288.7 *Coal mined by permittee, lessee, or licensee.* All coal mined either under a pending application for permit, lease, or license, or without such pending application, is a trespass and the coal so mined must be settled for on a trespass basis. However, where a permittee applies, prior to the expiration of his permit, for a lease, the mining of coal by him from the date of the filing of the lease application to the date of the issuance of the lease, or, if the lease application is rejected, to the date of notice to him of the final rejection of his application does not constitute a trespass.

§ 288.8 *Coal mined by successful bidder at public sale.* The successful bidder at public sale for a coal leasing unit does not acquire any right to mine coal until he has complied with all the formalities required by the regulations, including the furnishing of a bond, and a lease has been issued to him. Coal mined by such applicant prior to the date of the issuance of a lease is in trespass and must be paid for on a trespass basis.

PROCEDURE IN COAL TRESPASS CASES

§ 288.10 *Coal permit, lease, or license not to issue until trespass account settled.* No coal permit, lease, or license will be issued to anyone known to have mined coal in trespass until the trespass account is settled.

COAL MINING BY SURFACE OWNER

§ 288.11 *Right of surface owner to mine coal for domestic use.* The owner of land patented with a reservation of the coal deposits, either under the act of March 3, 1909 (35 Stat. 844; 30 U. S. C. 81), or under the act of June 22, 1910 (36 Stat. 583; 30 U. S. C. 83–85), has the right to mine coal for use upon the land for domestic purposes at any time prior to the disposal by the United States of the coal deposits.

SALE, LEASE OR PERMIT TO TRESPASSER

§ 288.12 *When timber or material may be sold, or a lease or permit issued, to a trespasser.* (a) For the purpose of this section, a trespasser is a person who is responsible for the unlawful use of or injury to property of the United States.

(b) No sale of timber or material will be made, and no permit or license will be issued, to a trespasser who has not satisfied his liability to the United States. except where:

(1) The Government has seized the materials cut, harvested, removed, or mined in trespass and the sale is made to the person who allegedly committed the trespass, at not less than the appraised value of the materials at the time of seizure, and without relieving the trespasser of liability for trespass damages to the extent that such damages exceed the amount paid for the materials; or

(2) The alleged trespasser files a bond conditioned upon payment of the amount of damages found by the authorized officer, or upon appeal by the Secretary of the Interior or his delegatee, to be due the United States; or

(3) The authorized officer finds in writing that there is a legitimate dispute as to the fact of the alleged trespasser's liability, or as to the extent of liability, or that the extent of the damages has not yet been determined, and the trespasser files a bond guaranteeing payment of the amount found by a court of competent jurisdiction to be due the United States; or

(4) The authorized officer finds in writing that:

(i) There is no other qualified bidder or that no other qualified bidder will meet the high bid, and

(ii) The sale or lease to the alleged trespasser is necessary to protect substantially the interest of the Government, either by preventing deterioration of or damage to the resource to be sold or loss or damage to other resources, or by accepting a highly advantageous price, and

(iii) The timber management or other resource management program of the Government will not be adversely affected by the sale.

This Circular replaces Circulars 881, 909, 1309, 1366, 1599, 1614, 1698, 1734 and 1853

INT.-DUP. SEC., WASH., D.C. 16030

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1977]

PART 192—OIL AND GAS LEASES

Office Copy

Replaced by 3002 (1)(5)

OFFER TO LEASE AND ISSUANCE OF LEASE

Paragraph (d) (2) of § 192.42 is amended to read:

§ 192.42 *Offer to lease and issuance of lease.* * * *

(d) * * *

(2) Where the land is surrounded by lands not available under the act.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 188)

HATTIELD CHILSON,
Acting Secretary of the Interior.

APRIL 29, 1957.

[F. R. Doc. 57-3608; Filed, Apr. 30, 1957; 8:45 a. m.]

Published in 22 F. R. May 1, 1957

Circular Distribution List

TIME OR WHEN PAYMENT MUST BE MADE FOR COAL MINED PRIOR TO ISSUANCE OF PERMIT, LEASE, OR LICENSE

§ 208.7 Coal mined by permittee, lessee, or licensee. All coal mined either under a pending application for permit, lease, or license, or without such pending application, is a trespass and the coal so mined must be settled for on a trespass basis. However, where a permittee applies, prior to the expiration of his permit, for a lease, the mining of coal by him from the date of the filing of the lease application to the date of the issuance of the lease, or, if the lease application is rejected, to the date of notice to him of the final rejection of his application does not constitute a trespass.

§ 208.8 Coal mined by successful bidder at public sale. The successful bidder at public sale for a coal leasing unit does not acquire any right to mine coal until he has complied with all the formalities required by the regulations, including the formation of a bond, and a lease has been issued to him. Coal mined by such applicant prior to the date of the issuance of a lease is a trespass and must be paid for on a trespass basis.

PROHIBITIVE USE COAL MINED IN TRESPASS

§ 208.10 Coal permit, lease, or license not to issue until trespass account settled. No coal permit, lease, or license will be issued to anyone known to have mined coal in trespass until the trespass account is settled.

COAL MINING BY OWNERS OF LANDS

§ 208.11 Right of owners generally to mine coal for domestic use. The owner of land patented with a reservation of the coal deposits, either under the act of March 3, 1909 (35 Stat. 844; 30 U. S. C. 81), or under the act of June 22, 1910 (36 Stat. 583; 30 U. S. C. 83 et seq.), has the right to mine coal for use upon the land for domestic purposes at any time prior to the disposal by the United States of the coal deposits.

SALE, LEASE OR PERMIT TO TRESPASSER

§ 208.12 When timber or material may be sold, or a lease or permit issued to a trespasser. (a) For the purpose of this section, a trespasser is a person who is responsible for the unlawful act of injury to property of the United States.

(b) No sale of timber or material will be made, and no permit or license will be issued, to a trespasser who has not satisfied his liability to the United States except where:

(1) The Government has stored the materials cut, harvested, removed, or mined in trespass and the sale is made to the person who allegedly committed the trespass, at not less than the appraised value of the materials at the time of seizure, and without relieving the trespasser of liability for trespass damages to the extent that such damages exceed the amount paid for the materials; or

(2) The alleged trespasser files a bond conditioned upon payment of the amount of damages found by the authorized officer, or upon appeal by the Secretary of the Interior or his delegates, to be due the United States; or

(3) The authorized officer finds in writing that there is a legitimate dispute as to the fact of the alleged trespasser's liability, or as to the extent of liability, or that the extent of the damages has not yet been determined, and the trespasser files a bond guaranteeing payment of the amount found by a court of competent jurisdiction to be due the United States; or

(4) The authorized officer finds as follows:

(i) There is no other qualified bidder or lessee or other qualified bidder will meet the high bid; and

(ii) The sale or lease to the alleged trespasser is necessary to protect substantially the interest of the Government, either in preventing destruction of or damage to the resource to be sold or leased or damage to other resources, or by acquiring a service advantageous to the Government; and

(iii) The sale or lease will not adversely affect the Government's or other property rights in the amount of the Government's or [illegible] be adversely affected by the sale.

This Circular replaces Circulars 881, 907, 1300, 1366, 1509, 1614, 1692, 1734 and 1863

DT.-BUR. REC. MAR. [illegible]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1977]

PART 192—OIL AND GAS LEASES

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Replaced by 2002 (1-58)

OFFER TO LEASE AND ISSUANCE OF LEASE

Paragraph (d) (2) of § 192.42 is amended to read:

§ 192.42 *Offer to lease and issuance of lease.* * * *

(d) * * *

(2) Where the land is surrounded by lands not available under the act.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189)

HATFIELD CHILSON,
Acting Secretary of the Interior.

APRIL 25, 1957.

[F. R. Doc. 57-3508; Filed, Apr. 30, 1957; 8:45 a. m.]

Published in 22 F. R. May 1, 1957

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter M—National Forests, National Parks, and National Monuments

[Circular No. 1978]

PART 205—NATIONAL FORESTS

PROCEDURE ON APPLICATIONS FOR LANDS WITHIN NATIONAL FORESTS

Part 205 is revised to read as follows:

AUTHORITY: §§ 205.1 and 205.2 issued under R. S. 2478; 43 U. S. C. 1201.

CROSS REFERENCES: For Indian allotments in national forests, see § 176.15 of this chapter. For mining claims in national forests, see § 185.33 of this chapter. For national forest homesteads, see Part 170 of this chapter. For Forest Service, Department of Agriculture, see Parks and Forests, 36 CFR Chapter II. For forest regulations of the Bureau of Indian Affairs, see Indians, 25 CFR Parts 61 to 64. For National Park Service, Department of the Interior, see Parks and Forests, 36 CFR Chapter I.

§ 205.1 *Showing required with application alleging settlement prior to establishment of forest.*[1] When a person files application to make entry, or to amend an existing entry, embracing lands within a national forest, basing the right of entry, or amendment, on settlement prior to the establishment of the forest, it must be accompanied by a statement in duplicate, containing his name and address, description and character of the land involved, the date he established residence on the land, his absence from the land, kind and character of improvements placed thereon, and the amount of land cleared and cultivated. Such statement, must be corroborated by at least one disinterested person.

§ 205.2 *Patent to be withheld pending report from Forest Service.* In no claim, mineral or non-mineral, shall patent issue for land within a national forest until the Bureau of Land Management is notified by, or ascertains from, the Forest Service, that the claim will not be contested. A claim may be contested by the Forest Service at any time prior to the issuance of patent or confirmation of the entry.

HATFIELD CHILSON,
Acting Secretary of the Interior.

APRIL 30, 1957.

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[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

[F. R. Doc. 57-3641; Filed, May 2, 1957; 8:53 a. m.]

Published in 22 F.R. May 3, 1957

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INT.-DUP. SEC., WASH., D.C. 16833

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter B—Applications and Entries

[Circular 1979]

PART 101—GENERAL REGULATIONS INVOLVING APPLICATIONS AND ENTRIES

USE OF CERTIFIED MAIL

Section 101.19 is amended to read as follows:

§ 101.19 *Use of certified mail.* Certified mail as outlined in 39 CFR Part 58, may be used in lieu of registered mail in public land matters within the jurisdiction of the Department of the Interior except where use of registered mail is specifically required by statute.

(R. S. 2478; 43 U. S. C. 1201)

HATFIELD CHILSON,
Under Secretary of the Interior.

MAY 6, 1957.

[F. R. Doc. 57-3833; Filed, May 9, 1957; 8:45 a. m.]

Published in 22 F.R. May 10, 1957

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INT.-DUP. SEC., WASH., D.C. 17191

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1980]

PART 80—TRUSTEE TOWNSITES IN ALASKA

SALES TO FEDERAL, TERRITORIAL, AND LOCAL GOVERNMENTAL AGENCIES; RIGHTS-OF-WAY

Sections 80.14a and 80.14b are revised to read as follows:

§ 80.14a *Sales to Federal, Territorial, and local governmental agencies.* (a) Any lot or tract in the townsite which is subject to sale to the highest bidder by the trustee pursuant to Section 80.14 of this chapter may in lieu of disposition at public sale be sold by the trustee at a fair value to be fixed by him to any Federal or Territorial agency or instrumentality or to any local governmental agency or instrumentality of the Territory for use for public purposes.

(b) All conveyances under this section shall be subject to such conditions, limitations, or stipulations as the trustee shall determine are necessary or appropriate in the circumstances, including, where he deems proper, a provision for reversion of title to the trustee or his successor in interest. Any such provision for reversion of title, however, shall by its terms cease to be in effect 25 years after the conveyance.

(c) Conveyances under this section for lands within any incorporated city, town, village, or municipality may be made only after the proposed conveyance has received the approval of the city, town, or village council, or of the local official designated by such council. Such conveyances for lands within any unincorporated city, town, village or municipality may be made only after notice of the proposed conveyance, together with the opportunity to be heard, has been given by the proposed grantee to the residents or occupants thereof in accordance with the requirements for such notice in the case of the public sale of unclaimed lots in a trustee townsite. Any decision of the trustee which is adverse to a protest will be subject to the right of appeal under Part 221 of this chapter. Upon filing of an appeal pursuant to that Part, action by the trustee on the conveyance will be suspended pending final decision on the appeal.

§ 80.14b *Rights-of-way.* (a) Notwithstanding any other provisions of this part, the trustee is authorized to grant rights-of-way for public purposes across any unentered lands within the townsite. This authority is expressly limited to grants of rights-of-way to cities, towns, villages, and municipalities, and to school, utility, and other types of improvement districts, and to persons, associations, companies, and corporations engaged in furnishing utility services to the general public, and to the United States, any Federal or Territorial agency or instrumentality for use for public purposes.

(b) The trustee may in his discretion fix a reasonable charge for any grant under this authority to private persons, associations, companies and corporations, and to Federal and Territorial agencies and instrumentalities, which charge shall be a lump sum. All grants shall be subject to such conditions, limitations, or stipulations as the trustee shall determine are necessary or appropriate in the circumstances. No grants of rights-of-way under this authority shall be made across or upon lands on which prior rights of occupancy or entry have vested under the law.

(c) Grants of rights-of-way under this section to Federal and Territorial agencies and instrumentalities to private persons, associations, companies, or corporations affecting lands within any incorporated city, town, village, or municipality, may be made only after the proposed grant has received the approval of the city, town, or village council, or, where applicable, the municipal board or commission having authority under Territorial law to approve rights-of-way for local public utility purposes. Grants of such rights-of-way to Federal and Territorial agencies and instrumentalities and to private persons, associations, companies, or corporations within unincorporated cities, towns, villages, or municipalities may be made only after notice of the proposed grant, together with the opportunity to be heard, has been given by the proposed grantee to the residents or occupants thereof in accordance with the requirements for such notice in the case of the public sale of unclaimed lots in a trustee townsite. Any decision by the trustee which is adverse to a protest will be subject to the right of appeal under Part 221 of this chapter. Upon the filing of an appeal, action by the trustee on the application for right-of-way will be suspended pending final decision on the appeal.

HATFIELD CHILSON,
Acting Secretary of the Interior.

AUGUST 1, 1957.

[F. R. Doc. 57-6460; Filed, Aug. 7, 1957; 8:46 a. m.]

Published in 22 F.R. August 8, 1957

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INT.-DUP. SEC., WASH., D.C. 22317

TITLE 43--PUBLIC LANDS
INTERIOR

Chapter 1--Bureau of Land Management, Department of the Interior

[Circular 1981]

PART 181—VETERANS', SOLDIERS' AND SAILORS' RIGHTS

The title to Part 181 is amended to read Part 181—Veterans', Soldiers' and Sailors' Rights, and §§ 181.1 to 181.8 are completely revised to read as follows, and §§ 181.9 to 181.15, 181.18, 181.19, and 181.35 to 181.47 are revoked.

PUBLIC LAND RIGHTS OF VETERANS

AUTHORITY: §§ 181.1 to 181.8 under sec. 6, 45 Stat. 1061, as amended, sec. 5, 58 Stat. 748, as amended; 43 U. S. C. 617e, 283.

§ 181.1 *Statutory authority.* (a) The act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279–284), as amended, referred to in this part as the "1944 Act", grants to veterans of World War II and of the Korean Conflict certain benefits in connection with the public lands. These rights are in addition to the benefits conferred on persons in the military service by the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1178; 50 U. S. C., App. 560–572), as amended, and the regulations thereunder in this part, relating to rights initiated or acquired under the public land laws prior to the entrance of the claimant into the military or naval service.

(b) Other statutes have granted benefits under the homestead laws (43 U. S. C. 164, 169, 218) to veterans who served in earlier wars. The veterans benefited, referred to in this part as "veterans of other wars" and the statutes conferring the benefits are as follows: Veterans of certain Indian Wars, act of April 7, 1930 (46 Stat. 144; 43 U. S. C. 243); veterans of the Civil War, Sec. 2305, Revised Statutes (43 U. S. C. 272); veterans of the war with Spain and of the suppression of the Philippine Insurrection, acts of June 16, 1898 (30 Stat. 473; 43 U. S. C. 240) and of March 1, 1901 (31 Stat. 847; 43 U. S. C. 271, 272); and veterans of the Mexican border operations and of World War I, act of February 25, 1919 (40 Stat. 1161; 43 U. S. C. 272a, 278), as amended by the act of April 6, 1922 (42 Stat. 491; 43 U. S. C. 233, 272, 273), and Public Resolution 79 of December 28, 1922 (42 Stat. 1067; 43 U. S. C. 186, 272a).

§ 181.2 *Who are entitled to veterans' benefits.* (a) A veteran is entitled to benefits under the 1944 act if he has served in the military or naval forces of the United States including the Coast Guard, on or after September 16, 1940, and prior to the termination of the Korean Conflict [1], referred to in this part as the "statutory period" of the 1944 act, and has been honorably discharged from such forces. The veteran is considered to have been honorably discharged for the purposes of the 1944 act if separated from the service by means of an honorable discharge, by the acceptance of resignation, or by a discharge under honorable conditions. A release from active duty is acceptable instead of a discharge if the release from active duty to an inactive status was under honorable conditions, whether or not in a reserve component or retirement, and whether or not the veteran thereafter resumes active military duty. In addition, the veteran must have:

(1) Served at least 90 days during the statutory period, or

(2) Been discharged on account of wounds received or disability incurred during the statutory period in line of duty, or

(3) After regular discharge, been furnished hospitalization or awarded compensation by the Government on account of wounds received or disability incurred during the statutory period.

A veteran, under 21 years of age, who is otherwise entitled to benefits under the 1944 act, may not be disqualified from making homestead entry or from any other benefits of the 1944 act merely because of age.

[1] As of the date of issuance of §§ 181.1 to 181.8, the Korean Conflict has not yet been declared terminated by Presidential proclamation or by concurrent resolution of Congress, as required by the 1944 act.

(b) A "veteran of other wars" is entitled to benefits if he was honorably discharged and served:

(1) With the United States Army or Navy or with a unit of the Federalized National Guard mustered into the United States service or with a Red Cross unit assigned to an Army or Navy unit, if the veteran served between April 15, 1861 and August 20, 1866, and remained loyal to the Government; or if he served between April 21, 1898 and July 15, 1903; or between May 9, 1916 and March 3, 1921; or with the Allied armies between July 28, 1914 and March 3, 1921 and thereafter resumed his United States citizenship; and if the veteran served for at least 90 days during any one of those periods, or was wounded or disabled in line of duty while in such service, or was awarded compensation by the United States for wounds or disability resulting from such service; or

(2) With a Federal, State, or Territorial military organization in any Indian War, campaign, or in a zone of active Indian hostilities between January 1, 1817 and December 31, 1898, if the veteran served for at least 30 days.

(c) The following persons may exercise the rights of a veteran under the regulations of this part, subject to compliance with other applicable regulations:

(1) The wife or husband of a veteran entitled to benefits under the 1944 act, if the veteran gives written consent, such benefits being in addition to any to which the spouse may individually be entitled under the 1944 act as a qualified veteran.

(2) The surviving wife or husband, or the surviving minor children if the spouse dies or remarries, of a veteran entitled to benefits under the 1944 act or of a person who died as the result of wounds received or disability incurred in line of duty while serving with the military or naval forces during the statutory period of the 1944 act.

(3) The heirs or devisees of a veteran entitled to the benefits of the 1944 act with respect to a homestead settlement or entry made by the veteran who died before perfecting title to the claim, without leaving a surviving spouse or minor children.

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(4) The unmarried widow of a "veteran of other wars" entitled to benefits under the regulations of this part who died prior to making homestead entry, or the widow of such a veteran who died after making homestead settlement or entry or filing a declaratory statement but prior to perfecting his claim.

(5) The minor orphan children of a "veteran of other wars" entitled to benefits under the regulations of this part if:

(i) The veteran died prior to making homestead entry or died while actually engaged in the war with Spain, the Philippine Insurrection, the Mexican border operation, or World War I after settling on public lands of the United States, and if the widow died or remarried; or

(ii) The veteran made homestead entry or filed a declaratory statement or his widow made homestead entry but died prior to perfecting the claim, leaving a minor child or minor children as his or her only heirs.

(6) The heirs or devisees of any "veteran of other wars" entitled to benefits under the regulations of this part who made homestead settlement or entry, or filed a declaratory statement, but died before perfecting title to the claim, leaving no widow or surviving minor children entitled as his only heirs to benefits under the regulations of this part.

§ 181.3 *Credit for and evidence of service.* (a) Any person, entitled to benefits under the regulations of this part, may obtain credit only for actual service, with the organizations and for the "statutory periods" specified in the regulations of this part, subject to minimum requirements specified in the regulations, in this part except as follows:

(1) Credit is granted for the equivalent of two years' service, regardless of the actual length of service by a veteran entitled to the benefits of the 1944 act, if the veteran was discharged because of wounds received or disability incurred in line of duty during the "statutory period" of the 1944 act or after regular discharge, was furnished hospitalization or awarded compensation by the Government on account of such wounds or disability; or died as the result of wounds received or disability incurred in line of duty during such period.

(2) Credit is granted for the whole term of enlistment, regardless of actual length of service by any "veteran of other wars" who was discharged because of wounds received or disability incurred in the line of duty, or who subsequent to discharge was awarded compensation for such wounds or disability.

(3) Credit is granted for the whole term of enlistment, regardless of actual length of service by any "veteran of other wars", except of the Indian wars, if the veteran died during the term of his enlistment.

(4) Credit is granted for service by any "veteran of other wars" except of the Indian wars, for the full term of the service under his enlistment, although such term did not expire until after the war ceased.

(5) Credit granted for service between May 9, 1916 and March 3, 1921, includes time spent in a course of training under the Vocational Rehabilitation Act of June 27, 1918 (40 Stat. 617) or under treatment in a Government hospital on account of wounds or disabilities incurred in line of duty during that period.

(b) For the purpose of the regulations of this part, credit for service in the military or naval forces of the United States begins upon induction into such service whether by enlistment, draft, appointment, or call into active service from a reserve status. Credit for service by a veteran entitled to the benefits of the 1944 act terminates upon his honorable discharge or release from active duty under honorable conditions to an inactive status, whether or not in a reserve component, or retirement, and whether or not he has thereafter resumed active duty. He is considered to have been honorably discharged for the purposes of the 1944 act if he has been separated from the service by means of an honorable discharge, or by the acceptance of resignation or a discharge under honorable conditions. Credit for the service by a member of the Naval Reserve or of the Federalized National Guard who was called into active service during the Mexican border operations or during World War I terminates upon the date of his actual discharge, and not upon the date that he was ordered to inactive duty. Except for veterans of Indian wars who served with State or Territorial troops, qualifying service does not include service with State or Territorial troops, units of the Red Cross, or the National Guard prior to assignment or after the termination of the assignment of such units or troops into the service of the United States.

(c) No credit for military service can be allowed where commutation proof is submitted.

(d) A veteran claiming benefits under this part must submit evidence clearly showing:

(1) A discharge from the armed forces or other unit on the basis of service with which he claims benefits under the regulations in this part;

(2) The period of his service; and

(3) Other facts upon which his claim is based.

Preferred evidence for subparagraphs (1) and (2) of this paragraph is a photostatic copy of both sides of the veterans certificate of discharge although other duly corroborated evidence will be accepted.

(e) Any other person claiming benefits under this section must submit all the evidence required of a veteran; and in addition, must include information as to whether the veteran is deceased, the date of his or her death, and whether the spouse has remarried, and facts as to homestead entry made by the veteran. A guardian, duly appointed and accredited to the Department must represent any surviving minor children. He must submit a like statement, and in addition give the name, address, and age of each surviving minor child.

§ 181.4 *Residence requirements under the homestead and Alaska homesite laws.* (a) Persons claiming benefits under the regulations in this part must comply with the homestead or Alaska homesite laws, as the case may be, for a period of at least one year and for such additional period as, added to the term of qualifying service, equals three years. Except as elsewhere indicated in this section, the following tables list the amount of residence required of such persons, according to the service credit to which they are entitled.

(1) Residence requirements under the homestead laws (43 U. S. C., sec. 161, et seq.): [2]

Number of months of service credit	Number of months of residence required during the first 3 years after entry		
	1 year	A second year	A third year
19 or more	7		
18	7	1	
17	7	2	
16	7	3	
15	7	4	
14	7	5	
13	7	6	
7 to 12	7	7	
6	7	7	1
5	7	7	2
4	7	7	3
3	7	7	4
2 [1]	7	7	5
1 [1]	7	7	6

[1] Applicable only as to service in any Indian war, campaign, or in a zone of active Indian hostilities since veterans need a minimum of only 30 days service to obtain statutory benefits for such service.

[2] In the computation of the required periods of homestead residence, there has been excluded the five months' of absence each year which may be taken by giving notice as required in Part 166 of this chapter.

(2) Residence requirements under the Alaska Homesite Act (48 U. S. C., sec. 461):[3]

Number of months of service credit	Number of months of residence required after entry		
	1 year of the entry	A second year of the entry	A third year of the entry
17 or more	5		
16	5	1	
15	5	2	
14	5	3	
13	5	4	
5 to 12	5	5	
4	5	5	1
3	5	5	2

(b) The following persons are excused from residence requirements:

(1) The surviving spouse, surviving minor orphan children, or other heirs or devisees, of a homestead entryman, who have succeeded to the homestead entry are excused from further residence on the land after the death of the entryman.

(2) Surviving minor orphan children of a veteran entitled to the benefits of the 1944 act who made an Alaska homesite entry are excused from further residence on the land after death of the entryman.

§ 181.5 *Cultivation and other requirements under the homestead and the Alaska homesite laws.* (a) An entryman entitled to benefits under the regulations in this part must comply with the requirements of these regulations and any others relating to his entry under the homestead or Alaska homesite law. If the entryman succeeds to the rights of a deceased entryman, the successor must show that the deceased entryman had complied with the applicable laws and regulations up to the time of his death.

(b) A homestead entryman obtaining benefits under the regulations in this part, may comply with the cultivation and other requirements and become entitled to a patent for his homestead prior to the termination of the three-year period otherwise required of homestead entrymen for such compliance, if he promptly files his final homestead proof. He must in any case cultivate at least one-eighth of the area entered. The following tables indicate the area of cultivation required under the homestead law of such persons, according to the service credit to which they are entitled.

(1) Cultivation requirements[4] under the homestead laws for persons entitled to the benefits of the 1944 act:

Year after date of entry during which proof is filed[1]	Portion of entry required to be cultivated				
	First year	Second year	Third year	Fourth year	Fifth year
First[2]	1/8				
Second[3]		1/8			
Third		1/16	1/8		
Fourth		1/16	1/8	1/8	
Fifth		1/16	1/8	1/8	1/8

[1] This table assumes that final homestead proof is filed promptly after competion of the cultivation requirements listed in the above table. The homestead law requires cultivation until final proof. If the homesteader delays submission of final homestead proof beyond the period of residence required, therefore, he must perform the necessary cultivation during each annual cultivable season elapsing or reached before the submission of proof, except for those years to which his service credit is applied.

[2] Applicable only to persons entitled to credit for 19 months or more of service.

[3] Applicable only to persons entitled to credit for 7 months or more of service.

(2) Cultivation requirements[4] under the homestead laws for persons entitled to the benefits of "veterans of other wars":

Year after date of entry during which proof is filed[1]	Portion of entry required to be cultivated				
	First year	Second year	Third year	Fourth year	Fifth year
First[2]					
Second[3]		1/16			
Third		1/16	1/8		
Fourth		1/16	1/8	1/8	
Fifth		1/16	1/8	1/8	1/8

[1] See footnote 1 in table in subparagraph (1) of this paragraph.

[2] See footnote 2 in table in subparagraph (1) of this paragraph.

[3] See footnote 3 in table in subparagraph (1) of this paragraph.

(c) The following persons are excused from any further compliance with the requirements of laws and regulations relating to the entries to which they have succeeded, nor do they have to show that the entryman had complied with applicable laws and regulations prior to his death:

(1) The surviving minor orphan children of a person entitled to the benefits of the 1944 act.

(2) The surviving minor orphan children of anyone else who made homestead entry but who died prior to perfection of title, leaving only a minor child or minor children.

(3) The widow of a veteran, or in case of her death or remarriage, the surviving minor children, if the veteran settled on the public lands but died prior to perfecting his title, while actually engaged in the military or naval service of the United States during the war with Spain, the Philippine Insurrection, the Mexican border operations, or World War I.

§ 181.6 *Soldiers' and Sailors' declaratory statements.* (a) "Veterans of other wars" may initiate a homestead entry by filing a soldiers' and sailors' declaratory statement. Veterans who served between May 9, 1916, and March 3, 1921, must file their statements in person on Form 4–546. Others may file either on Form 4–545 through an agent acting under power of attorney, or on Form 4–546 when filing in person. Such statements must be accompanied by a filing fee of $3 if the lands are located in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, or Wyoming and by a filing fee of $2.00 if the lands are located elsewhere.

(b) In Alaska the veteran must commence residence on the land within 6 months after the filing of his statement. Elsewhere, he must commence residence within 6 months after allowance of his entry.

(c) Filing of a declaratory statement segregates the lands from all forms of appropriation.

(d) Filing of a declaratory statement in Alaska exhausts the person's homestead right, subject to such relief as may be provided by the general homestead laws.

§ 181.7 *Preference right of application and settlement.* (a) From September 27, 1944, to September 26, 1959, inclusive, any person entitled to benefits under the 1944 act, has a preferred right for a period of 90 days upon the restoration or opening of public lands to application or entry, subject to requirements of applicable law:

(1) To apply for such lands under the homestead or desert-land laws, the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U. S. C. 682a), as amended, or the Alaska Home Site Act of May 26, 1934 (48 Stat. 908 48 U. S. C. 461), and

(2) To settle on such unsurveyed lands in Alaska under the homestead or homesite laws.

(b) The preference rights of this section are not applicable to the following:

(1) Lands made available through the termination of an entry, selection, location, or similar appropriation,

(2) Lands in an order of revocation processed in order to assist in a Federal land program other than the ones authorized by the homestead, desert land, small tract, and homesite laws,

(3) Lands subject to existing valid rights or preference rights conferred by existing laws or equitable claims subject to allowance and confirmation, and

(4) Lands eliminated from national forests and covered by the claims of holders of permits issued by the Department of Agriculture whose permits have been terminated because of such elimination and who own valuable improvements on such lands (act of June 3, 1948, 62 Stat. 305; 43 U. S. C. 284).

(c) Until September 27, 1959, lands subject to the preference rights of this section will be restored or opened to application or entry by an order published in the FEDERAL REGISTER, specifically providing for such preference rights.

§ 181.8 *Boulder Canyon Project.* Under the terms of section 9 of the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1063) as amended by the act of March 6, 1946 (60 Stat. 36, 43 U. S. C. 617h), all persons who served in the Army, Navy, Marine Corps, or Coast Guard during World War II, World War I, the war with Spain, or in the suppression of the insurrection in the Philippines, and who have been honorably separated or discharged therefrom

[3] These reduced residence requirements are applicable only to persons entitled to the benefits of the 1944 act.

[4] A person entitled to benefits under the regulations of this part may receive a reduction in the area to be cultivated under the homestead regulations (Part 166 of this chapter) in the same manner and under the same conditions required of other applicants.

or placed in the regular Army or Naval Reserve, will have a preference right for a period of three months to enter lands reclaimed by irrigation and reclamation under that act, subject to such qualifications as to industry, experience, character, and capital, as are deemed necessary to give reasonable assurance of success by the prospective settler. Such exclusive preference right is also given by the act cited to veteran settlers on lands watered from the Gila Canal in Arizona and on lands watered from the All-American Canal in California.

HATFIELD CHILSON,
Acting Secretary of the Interior.

AUGUST 1, 1957.

[F. R. Doc. 57-6459; Filed, Aug. 7, 1957; 8:46 a. m.]

GPO 870032

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1982]

PART 295—WITHDRAWALS AND RESERVATIONS OF FEDERAL LANDS

The center heading before §§ 295.9 to 295.11 and 295.9 to 295.11 are revised to read as shown below and new §§ 295.12 to 295.15 are added as follows:

APPLICATIONS FOR WITHDRAWAL OR RESERVATION OF FEDERAL LANDS

AUTHORITY: §§ 295.9 to 295.15 issued under R. S. 2478, 43 U. S. C. 1201.

§ 295.9 *Who may apply.* The following are qualified to make application for the withdrawal or reservation, under the authority of Executive Order 10355, May 26, 1952 (17 F. R. 4831, 3 CFR, 1952 Supp.), or under the statutory authority of the Secretary of the Interior, of lands owned or controlled by the United States for the use or benefit of the governmental unit they represent; the heads of Federal agencies and instrumentalities and of States and the Territory of Alaska and their political subdivisions or any subordinate officer designated by them.

§ 295.10 *Filing of applications.* (a) Except where the application is classified by the applicant for national security reasons, all applications for withdrawal or reservation must be filed, in duplicate, in the proper Land Office for the area where the lands are located, or for lands in areas in which there are no Land Offices, with the Bureau of Land Management, Washington 25, D. C., except that applications for lands in North and South Dakota must be filed in the Land Office at Billings, Montana, for lands in Kansas or Nebraska in the Land Office at Cheyenne, Wyoming, and for lands in Oklahoma in the Land Office at Santa Fe, New Mexico. Where the application is classified by the applicant agency for national security reasons, it must be submitted to the Office of the Secretary, Department of the Interior, Washington 25, D. C.

(b) No specific form of application is prescribed but it must contain the following information:

(1) Name and address of the applicant agency.

(2) Description and acreage of the lands desired, describing the lands in terms of the public land survey or if unsurveyed, by metes and bounds, with the approximate area. A metes and bounds description should be connected by course and distance with some corner of the public land surveys, if practicable, or with reference to rivers, creeks, mountains, towns, or other prominent topographical points or natural objects or monuments.

(3) The purpose for which the withdrawal or reservation is requested unless the purpose is classified for national security reasons in which case a statement to that effect will be sufficient.

(4) A justifcation for the proposed withdrawal including a statement showing the need for all the land requested.

(5) A statement showing the concurrent uses which will be permissible if the lands are withdrawn or reserved, such as grazing, timber management and disposal, mineral leasing, and mining locations.

(6) Citation of the statutory authority for the type of withdrawal or reservation requested.

§ 295.11 *Segregative effect of applications.* (a) The noting of the receipt of the application in the tract books or on the official plats maintaind by the Land Office in which the application was properly filed or in the tract books maintained by the Washington Office of the Bureau of Land Management if there is no Land Office for the State in which the lands are located shall temporarily segregate such lands from settlement, location, sale, selection, entry, lease, and other forms of disposal under the public land laws, including the mining and the mineral leasing laws, to the extent that the withdrawal or reservation applied for, if effected, would prevent such forms of disposal. To that extent, action on all prior applications the allowance of which is discretionary, and on all subsequent applications, respecting such lands will be suspended until final action on the application for withdrawal or reservation has been taken. Such temporary segregation shall not affect the administrative jurisdiction over the segregated lands.

(b) An application may be amended at any time by the applicant agency so as to eliminate therefrom lands no longer desired for withdrawal or reservation. The noting upon the proper public records of information regarding such amendment shall relieve the lands so eliminated of the segregative effect of the agency's application; and any suspended applications from other persons for the eliminated lands may be processed without regard to the agency's application.

(c) An amendment of an agency's application so as to include additional lands shall have as to such lands the segregative effect provided for in paragraph (a) of this section from the date of the entry of information regarding the receipt of such request on the records mentioned in paragraph (a) of this section. Such an amendment will be processed either as a part of that application or separately, as the facts may warrant.

§ 295.12 *Publicity; hearing; investigations; and negotiations.* (a) The authorized officer of the Bureau of Land Management will have published in the FEDERAL REGISTER a notice on Form 4-1193 of the filing of the application and of the opportunity of the public to object to, or comment on, the proposed withdrawal or reservation. In cooperation with the applicant agency, he will also provide for publicity sufficient to inform the interested public of the proposed withdrawal or reservation.

(b) If, as a result of such notice and publicity, sufficient protest is filed against the proposal, or if, in his discretion, it is otherwise desirable in the public interest, the authorized officer of the Bureau of Land Management will, subject to the approval of the Secretary of the Interior if the applicant agency objects, hold a public hearing at a time and in a place convenient to the interested public and to the agencies involved. Costs of such hearings incurred by the Bureau of Land Management, except for the salaries of its personnel, will be borne by the applicant agency.

(c) The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the

Published in 22 F. R. August 17, 1957

Circular Distribution List

This circular replaces Circular 1830

concurrent utilization of the
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Findings; review; publica-
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4-1164). Upon the noting of the
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§ 295.14 *Withdrawals or reservations for the use or benefit of non-Federal agencies.* Lands withdrawn or reserved under this part for the use or benefit of a non-Federal agency will remain or will be placed under the jurisdiction of the appropriate Federal agency.

§ 295.15 *Payment for improvements.* The allowance of an application for withdrawal under the regulations of this part will be conditional upon the payment by the applicant agency or upon agreement of the applicant agency to pay to the owner or owners of range or other improvements placed upon the lands pursuant to an agreement with the United States such amount and at such times as the authorized official of the Bureau of Land Management deems fair and reasonable under the circumstances and the terms of such agreement to compensate for the loss of the improvements, providing that the applicant agency is authorized by law to make such compensation. In addition, a holder of a grazing license or permit for lands within a grazing district will be compensated for the loss resulting from the use of the lands embraced in the license or permit for war or national defense purposes in an amount to be determined fair and reasonably by, and to be paid by, the head of the Department or Agency of the Federal Government making such use.

HOWARD CHILSON,
Acting Secretary of the Interior.

AUGUST 11, 1957.

[F. R. Doc. 57-6771; Filed, Aug. 16, 1957; 8:47 a. m.]

107-GPO 102.. WASH., D.C. ,1963

L0

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter L—Mineral Lands

[Circular 1983] Replaced by 2002 (11458)

PART 192—OIL AND GAS LEASES

AVAILABILITY OF LANDS TO FURTHER LEASE OFFERS WHERE NONCOMPETITIVE LEASE IS CANCELLED, RELINQUISHED OR TERMINATED

Paragraph (a) of § 192.43 is amended to read as follows:

§ 192.43 *Availability of lands to further lease offers where noncompetitive lease is cancelled, relinquished or terminated.* (a) Where the lands embraced in a relinquished or cancelled noncompetitive lease are not on the known geologic structure of a producing oil and gas field, and are not withdrawn from leasing, such lands become available for, and subject to, filings of new lease offers immediately upon the notation of the cancellation or relinquishment on the tract book, or, for acquired lands, on the official records relating thereto, of the appropriate land office. If prior to such notation, the lease term would have expired in the absence of the cancellation or relinquishment, the lands shall, upon such expiration of the lease term, become subject to the filing of lease offers even though the notation of the cancellation or relinquishment has not been made on the records. See § 192.120 (f) and (g) for the availability for new filings of lands in a lease for which an application for extension has or has not been timely filed; also, see § 192.161 (a) for the availability for new filings of lands in a lease subject to the automatic termination provisions of the act of July 29, 1954 (68 Stat. 583; 30 U. S. C. 188), for lessee's failure timely to pay the lease rental.

HATFIELD CHILSON,
Acting Secretary of the Interior.

AUGUST 23, 1957.

[F. R. Doc. 57-7078; Filed, Aug. 28, 1957; 8:47 a. m.]

Published in 22 F.R. August 29, 1957

Circular Distribution List

INT.-DUP. SEC., WASH., D.C. 23447

Recd by C-2173

TITLE 43 --PUBLIC LANDS: INTERIOR

Chapter 1--Bureau of Land Management, Department of the Interior

Circular No. 1984

Part 140--General Regulations Governing Color-of-Title Claims

AUTHORITY: §§ 140.1 to 140.12 issued under R. S. 2478; 43 U. S. C. 1201.

SOURCE: §§ 140.1 to 140.12 appear at 19 F. R. 8925, Dec. 23, 1954.

§ 140.1 *Statutory authority.* The act of December 22, 1928 (45 Stat. 1069), as amended by the act of July 28, 1953 (67 Stat. 227; 43 U. S. C. 1068, 1068a), authorizes the issuance of patent for not to exceed 160 acres of public lands held under claim or color of title of either of the two classes described in § 140.3, upon payment of the sale price of the land.

§ 140.2 *Definition.* "The act", when used in this part, means the act of December 22, 1928 (45 Stat. 1069; 43 U. S. C. 1068, 1068a), as amended by the act of July 28, 1953 (67 Stat. 227, 43 U. S. C. 1068a).

§ 140.3 *Classes of claims.* The claims recognized by the act will be referred to in this part as claims of class 1, and claims of class 2. A claim of class 1 is one which has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation. A claim of class 2 is one which has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application, during which time they have paid taxes levied on the land by State and local governmental units.

§ 140.4 *Who may apply.* Any individual, group, or corporation authorized to hold title to land in the State and who believes he has a valid claim under color of title may make application.

§ 140.5 *Description of lands applied for.* Application under the act may be made for surveyed or unsurveyed lands. If unsurveyed, the description must be sufficiently complete to identify the location, boundary, and area of the land and, if possible, the approximate description or location of the land by section, township, and range. If unsurveyed land is claimed, final action will be suspended until the plat of survey has been officially filed.

§ 140.6 *Application.* (a) An application for a claim of class 1 or of class 2 must be filed in duplicate on Form 4–1250.[1] It must be filed with the land office for the district in which the land is situated, or, if there is no land office for the district in which the land is situated, with the Bureau of Land Management, Washington 25, D. C., except applications for lands in North or South Dakota shall be filed in the land office at Billings, Montana, applications for lands in Nebraska and Kansas shall be filed in the land office at Cheyenne, Wyoming, and for lands in Oklahoma in the land office at Santa Fe, New Mexico.

[1] Filed with the Federal Register Division as part of the original document.

(b) Every application must be accompanied by a filing fee of $10, which will be nonreturnable.

(c) The application must be in typewritten form, or in legible handwriting, and it must be completely executed and signed by the applicant.[2]

(d) Every applicant must furnish information required in the application form concerning improvements, cultivation, conveyances of title, taxes, and related matters.

§ 140.7 *Presentation and verification of factual statements.* (a) Information relating to all record and nonrecord conveyances, or to nonrecord claims of title, affecting the land shall be itemized on Form 4–1251.[1] The statements of record conveyances must be certified by the proper county official or by an abstractor. The applicant may be called upon to submit documentary or other evidence relating to conveyances or claims. Abstracts of title or other documents which are so requested will be returned to the applicant.

(b) Applicants for claims of class 2 must itemize all information relating to tax levies and payments on the land on Form 4–1252,[1] which must be certified by the proper county official or by an abstractor.

§ 140.8 *Minerals.* (a) Any applicant who satisfied all requirements for a claim of class 1 or of class 2 commencing not later than January 1, 1901, to the date of application and who so requests in the application will receive a patent conveying title to all other minerals except:

(1) Any minerals which, at the time of approval of the application, are embraced by an outstanding mineral lease or

(2) Any minerals for which the lands have been placed in a mineral withdrawal.

All other patents will reserve all minerals to the United States.

(b) All mineral reservations will include the right to prospect for, mine, and remove the same in accordance with applicable law.

§ 140.9 *Price of land.* The land applied for will be appraised on the basis of its fair market value at the time of appraisal. However, in determination of the price payable by the applicant, value resulting from improvements or development by the applicant or his predecessors in interest will be deducted from the appraised price, and consideration will be given to the equities of the applicant. In no case will the land be sold for less than $1.25 per acre.

§ 140.10 *Acreage limitation.* No patent will be issued pursuant to an application under the act which exceeds 160 acres.

§ 140.11 *Payment.* Applicant will be required to make payment of the sale price of the land within the time stated in the request for payment.

§ 140.12 *Publication; protests.* (a) The applicant will be required to publish once a week for four consecutive weeks in accordance with § 106.14 of this chapter, at his expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file in the office specified in § 140.6, their objections to the issuance of patent under the application. A protestant must serve on the applicant a copy of the objections and furnish evidence of such service.

(b) The applicant must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

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[1] Filed with the Federal Register Division as part of the original document.

[2] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

This Circular replaces Circular 1872

GPO 944863

TITLE 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior

[Circular No. 1985]

PART 9—LEASES, PERMITS, AND EASEMENTS FOR PUBLIC WORKS

A new part is added as follows:

AUTHORITY: §§ 9.1 to 9.7 issued under R. S. 2478; 43 U. S. C. 1201.

§ 9.1 *Statutory authority.* The act of September 3, 1954 (68 Stat. 1146; 43 U. S. C. 931c, 931d) authorizes the head of any Federal department or agency having jurisdiction over public lands and national forests of the United States, to grant permits, leases, or easements, under certain conditions, to States, counties, cities, towns, townships, municipal corporations, or other public agencies for the purpose of constructing and maintaining public buildings and other public works on such lands. National parks and monuments are not subject to the provisions of the act. The authority granted by the act is in addition to and not in derogation of any authority conferred upon the Seretary of the Interior to grant permits, leases, easements, or rights-of-way.

§ 9.2 *Applicability of regulations; where to apply.* (a) The regulations of this part apply only to public lands under the administration of the Department of the Interior. For regulations applicable to other Federal public lands, the appropriate titles of this code should be consulted.

(b) For public lands under the administration of the Bureau of Land Management, applications shall be filed in the proper land office in the State or for lands in a State in which there is no land office, shall be filed with the Bureau of Land Management, Washington 25, D. C., except that applications for lands in North Dakota or South Dakota shall be filed in the land office at Billings, Montana, applications for lands in Kansas or Nebraska shall be filed in the land office at Cheyenne, Wyoming, and for lands in Oklahoma in the land office at Sante Fe, New Mexico.

(c) For public lands under the administration of the United States Fish and Wildlife Service, applications shall be filed in the local office of the hatchery, refuge, or other station which has jurisdiction over the lands.

(d) For public lands under the administration of the Bureau of Reclamation, applications shall be filed in the office of the Regional Director who has jurisdiction over the lands.

(e) For public lands under the administration of the Bureau of Indian Affairs, applications shall be filed in the office of the superintendent of the agency which has jurisdiction over the lands, or for lands for which there is no agency, in the office of the Area Director who has jurisdiction over the lands.

(f) For public lands under the administration of other Bureaus of the Department of the Interior, applications shall be filed in the appropriate local office of such Bureau.

§ 9.3 *General provisions.* The following terms and conditions apply to all leases, permits, and easements granted under the regulations of this part.

(a) All minerals, together with the right to mine and remove the same under applicable laws and regulations, will be reserved to the United States.

(b) The term of all leases, permits, and easements will be fixed by the authorized officer but may not exceed 30 years. Such instruments will be renewable at the discretion of such officer who at the request of the grantee, may also authorize modification of the permitted use of the lands and the transfer of the instrument to another qualified public agency.

(c) Applicants will be required to pay the fair market value of the permit, lease, or easement, as determined by appraisal by the authorized officer. Periodic payments or a lump-sum payment, both payable in advance, will be required at the discretion of such officer: (1) When periodic payments are required, the applicant will be required to make the first payment before the lease, permit, or easement will be issued; (2) upon the voluntary relinquishment of such an instrument before the expiration of its

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Circular Distribution List

term, any payment made for any unexpired portion of the term will be returned to the payer upon a proper application for repayment to the extent that the amount paid covers a full permit, lease, or easement year or years after the formal relinquishment. The amount to be so returned will be the difference between the total payments made and the value of the expired portion of the term calculated on the same basis as the original payments.

(d) Leases, permits, and easements will be terminable by the authorized officer upon a finding (1) of failure by the holder to comply with their terms, (2) that all or part of the land is being devoted to uses other than the use specified in the lease, permit, or easement, (3) that the lands are not being used for the purpose so specified, or (4) that the lease, permit, or easement has been transferred to another without the consent of the authorized officer.

§ 9.4 *Applications; modifications; transfers; renewals.* (a) Applicants for a permit, lease, or easement must file an application, in triplicate (quadruplicate if the lands are administered by the United States Fish and Wildlife Service) and in typewritten form. No particular form is prescribed, but the application must include (1) the name and post office address of the applicant, (2) the legal description of the lands desired or, if not surveyed according to the rectangular system of surveys, the description of the lands in sufficient detail to permit their accurate identification on the ground, and if an easement for a right-of-way is involved, the maps specified in § 244.6 of this title, (3) a statement showing the purposes for which the lands would be used, and (4) the name and title of the person making application, together with a statement showing his authority to make application on behalf of the applicant.

(b) Holders of leases, permits, or easements may make application (1) to add to or change the use of the lands, (2) to transfer the instrument to another public agency qualified under the act and complying with these regulations, or (3) to renew the instrument at the end of its term. No form is specified but the matter should be fully explained by the applicant. Each such application must be in triplicate (quadruplicate if the lands are administered by the United States Fish and Wildlife Service).

§ 9.5 *Terms and conditions of easements.* The terms and conditions of easements issued under the regulations of this part will be governed by the regulations of Part 244 of this title, including § 244.17 of this title, insofar as they are applicable and insofar as they do not conflict with regulations in this part.

§ 9.6 *Terms and conditions of leases and permits.* (a) Leases and permits issued under the regulations of this part will contain (1) the usual terms and conditions required by law, public policy, and insofar as possible, by Department of the Interior procedures and (2) such other terms and conditions which the authorized officer considers necessary for the proper development of the land, for the protection of public property, and for the protection of the public interest.

(b) Any minerals subject to the leasing laws in the lands under lease or permit under the regulations may be disposed of to any qualified person under applicable laws and regulations. Until other rules and regulations are issued, other minerals are not subject to disposition or, except by an authorized Federal agency, to prospecting.

(c) A lessee or permittee will not be permitted to cut timber from the land without prior permission from the authorized officer.

§ 9.7 *Appeals.* An appeal pursuant to the rules of practice of the Department of the Interior may be taken from the decision of an authorized officer.

FRED A. SEATON,
Secretary of the Interior.

OCTOBER 18, 1957.

[F. R. Doc. 57-8781; Filed, Oct. 24, 1957; 8:46 a. m.]

GPO 879795

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1986] Replaced by 2005

PART 196—PHOSPHATE LEASES AND USE PERMITS

MISCELLANEOUS AMENDMENTS

Section 196.2 (a) is amended to read as follows:

§ 196.2 *Size of leasehold and limitation of acreage holdings.* (a) Except where the rule of approximation applies, a lease may not include over 2,560 acres in reasonably compact form. Each lease shall contain the description of the land involved by legal subdivisions of the public land surveys. No person, association, or corporation, may hold at any one time, either directly or indirectly, leases that exceed in the aggregate 10,240 acres in the United States.

Section 196.7 (b), (c) and (f) is amended to read as follows:

§ 196.7 *Application for lease.* * * *

(b) A statement of his interests, direct or indirect, whether as a member of an association or stockholder in a corporation, or otherwise in other phosphate leases or applications therefor on public lands, identifying the same by land office and serial number together with the total amount of acreage so held in the United States, and a statement that such holdings under said act, together with the lands applied for, do not exceed in the aggregate the maximum allowable area of 10,240 acres in the United States.

(c) Proof of citizenship: If applicant is an individual, a statement as to whether native born or naturalized; if an association (including a partnership), it must submit a certified copy of the articles of association and a statement by its members as to their citizenship and holdings. If the applicant is a corporation, it must submit statements showing (1) the State or Territory in which it is incorporated; (2) that it is authorized to hold leases for phosphate deposits, and the names of the officers authorized to act in such matters in behalf of the corporation; (3) the percentage of the corporate voting stock and of all the stock owned by aliens or those having addresses outside of the United States; and (4) the name, address, citizenship and acreage holdings of any stockholder owning or controlling 20 percent or more of the corporate stock of any class. If more than 10 percent of the stock is owned or controlled by or on behalf of aliens, or persons who have addresses outside of the United States, the corporation must give their names and addresses, the amount and class of stock held by each, and to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each. Where such material has previously been filed a reference by serial number to the record in which it has been filed, together with a statement as to any amendments will be accepted.

* * * * *

(f) Each applicant must show in sufficient detail that:

(1) The amount of phosphate lands, Federal and non-Federal, held by him, together with the lands described in the application are necessary for his proposed development plan.

(2) He intends to explore, mine and develop the property in good faith.

(3) His proposed operations of the property will be in accordance with good conservation practice and this additional development is needed in order to supply an existing demand which cannot otherwise be reasonably met.

Section 196.8 (b) is amended to read as follows:

§ 196.8 *Noncompetitive application; publication; protest.* * * *

(b) The notice shall describe the land, specify the rental and royalty to be paid under the lease, and the minimum production requirement, together with a general statement as to the exploration program required by the Secretary to be undertaken by the applicant after lease issuance to ascertain that development is feasible under the lease. The notice shall also state (1) that the minimum production requirement will not be reduced or waived at the lessee's request except as provided in § 196.5, § 196.6, § 191.25 or § 191.26 of this chapter, and (2) that the lease will be canceled if apart from or in addition to any other grounds that may exist therefor, production, or the construction of production facilities, including processing plants, is not commenced by the beginning of the fourth year of the lease. A copy of the notice will be posted in the land office after receipt by the manager.

Section 196.10 is amended to read as follows:

§ 196.10 *Offer of lands or deposits for lease by competitive bidding.* If, in connection with a lease application or otherwise, the authorized officer shall determine, after consultation with the Mining Supervisor of the Geological Survey as to the need for further exploration, royalty rates and production requirements and any other technical matters, that specific lands or deposits which constitute an acceptable leasing unit are subject to phosphate lease without the need of further exploration before development could reasonably be undertaken, the offer of lease will be made on the terms and conditions to be specified in the notice of lease offer to the qualified person who offers the highest bonus by competitive bidding either at public auction or by sealed bids as provided in the notice of lease offer.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189)

FRED A. SEATON,
Secretary of the Interior.

NOVEMBER 14, 1957.

[F. R. Doc. 57-9623; Filed, Nov. 20, 1957; 8:47 a. m.]

Published in 22 F. R. November 21, 1957

Circular Distribution List

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1987]

PART 70—MINERAL LANDS; COAL PERMITS AND LEASES AND LICENSES FOR FREE USE OF COAL

APPLICATION FOR LEASE BY COMPETITIVE BIDDING

Paragraph (a) (2) of § 70.11 is amended to read as follows:

§ 70.11 *Application for lease by competitive bidding.* (a) * * *

(2) Proof of citizenship: If applicant is an individual, a statement as to whether native born or naturalized; if an association (including a partnership), it must submit a certified copy of the articles of association and a statement by its members as to their citizenship and holdings. If applicant is a corporation, it must submit statements showing: (i) The State or Territory of incorporation; (ii) that it is authorized to hold leases for coal deposits, and names of the officers authorized to act in such matters in behalf of the corporation; (iii) a separate showing as to citizenship and holdings of any stockholder owning or controlling at least 20 percent of the corporate stock; and (iv) a statement of the proportion of its stock owned or held by aliens. If a majority of the corporate stock is held by aliens, the application will be denied. A municipality must submit evidence of: (*a*) The manner in which it was organized; (*b*) that it is authorized to hold leases; and (*c*) that the action proposed has been duly authorized by its governing body. Where such material has previously been filed a reference by serial number to the record in which it has been filed, together with a statement as to any amendments will be accepted.

(Sec. 17, 38 Stat. 745; 48 U. S. C. 451)

FRED A. SEATON,
Secretary of the Interior.

NOVEMBER 14, 1957.

[F. R. Doc. 57-9624; Filed, Nov. 20, 1957; 8:47 a. m.]

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Circular Distribution List

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1988]

PART 161—THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS

FEES; TIME OF PAYMENT; REFUNDS

1. Paragraph (b) of § 161.8 is amended to read as follows:

§ 161.8 *Fees; time of payment; refunds.* * * *

(b) *Licenses and permits.* Each regular licensee or permittee, and holder of a nonrenewable license will be charged fees, consisting of a grazing fee for the use of the range and a range improvement fee, for the animal unit months authorized by the license or permit, at a rate per animal unit month. Such rates, including the percentage of the total fee to be credited to range improvement, will be published as a notice in the FEDERAL REGISTER. All billing shall be issued in accordance with the rates prescribed in the notice. All livestock six months of age or over allowed on the Federal range will be considered at any point of time during the grazing period as a part of the total number for which a license or permit has been issued. No fees will be charged for livestock under six months of age. Range improvement fees, upon the recommendation of the advisory board and approval of the Director, may vary in accordance with the character or requirements of the various districts or portions thereof. Grazing fees may differ in any district or unit thereof in which the grazing capacity of the Federal range is increased by reason of the addition of land not owned by the United States, or by reason of a cooperative agreement or memorandum of understanding between the Bureau of Land Management, and any State or Federal agency, or any person, association, or corporation. A minimum annual charge of $5 will be made on all regular licenses or permits, and non-renewable licenses.

NOTE: The fees for the year beginning January 1, 1958, will be established at the rate equivalent to the average of prices of beef and lamb to the nearest whole cent, paid to growers during the calendar year 1957 in the markets of the eleven Western States, as determined by the Director of the Bureau of Land Management on the basis of marketing data for the preceding year furnished by the Agricultural Marketing Service, Department of Agriculture. In succeeding years a change in the fees will be made only when the average of such prices paid to the growers in the preceding year, rounded to the nearest whole cent, shall be two cents or more above or two cents or more below the fees then in effect. The fee rate, including the percentage of the total fee to be credited to range improvement, for 1958 and subsequent changes in such rate, will be published as a notice in the FEDERAL REGISTER. All regular billings shall be issued in accordance with the rate prescribed in the notice.

(Sec. 2, 48 Stat. 1270; 43 U. S. C. 315a)

FRED A. SEATON,
Secretary of the Interior.

NOVEMBER 21, 1957.

[F. R. Doc. 57-9865; Filed, Nov. 27, 1957; 8:48 a. m.]

Published in 22 FR November 28, 1957

Circular Distribution List

INT.-DUP. SEC., WASH., D.C.-27822

Repl by C-2062

TITLE 43--PUBLIC LANDS: INTERIOR

Chapter 1--Bureau of Land Management, Department of the Interior

Circular 1989

Part 103—Entries Subject to Section 24 of Federal Power Act

AUTHORITY: §§ 103.1 to 103.5 issued under R. S. 2478; 43 U. S. C. 1201.

SOURCE: §§ 103.1 to 103.5 appear at 19 F. R. 8894, Dec. 23, 1954.

CROSS REFERENCES: For applications and entries, Alaska, see Part 60 of this chapter. For rights of way for power projects and for power transmission lines, see Part 244 of this chapter. For regulations of the Federal Power Commission, see 18 CFR Chapter I. For rights of way over Indian lands; power projects; see Indians, 25 CFR 256.42–256.44.

APPLICATIONS AND ENTRIES CONFLICTING WITH LANDS RESERVED OR CLASSIFIED AS POWER SITES, OR COVERED BY POWER APPLICATIONS

§ 103.1 *Statutory authority.* Section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075, as amended, 49 Stat. 846; 16 U. S. C. 818), provides that any lands of the United States included in an application for power development, under said act, shall be reserved from entry, location, or other disposal under the laws of the United States, until otherwise directed by the Federal Power Commission or by Congress. It also provides that whenever the said Commission shall determine that the value of any lands withdrawn or classified for power purposes will not be injured or destroyed for such purposes by location, entry or selection under the public land laws, the Secretary of the Interior shall declare such lands open to location, entry or selection, subject to and with a reservation of the right of the United States or its permittees or licensees to enter upon, occupy and use any or all of such lands for power purposes.

§ 103.2 *Application for restoration of withdrawn lands.* Whenever the manager finds it necessary to reject an application, he should inform the applicant that he is at liberty to file an application for the restoration of such withdrawn lands, under the provisions of section 24 of the Federal Power Act, but that favorable action upon such application will not give the applicant any preference right, or right to preferential treatment if or when the lands are finally restored.

§ 103.3 *Rights to withdrawn lands which may be recognized.* (a) Withdrawn public lands are not subject to lease, or other disposition, other than such as is specifically recognized by the Federal Power Act and there is no way to acquire preference rights, preferential treatment, or equitable or legal preference, excepting where legal or equitable rights were acquired before the withdrawal of the land, and that, in all cases where such rights are claimed, careful investigation as to its bona fides will be made before it is recognized.

(b) While the act of June 25, 1910 (36 Stat. 847; 43 U. S. C. 141–143), allows metalliferous mineral explorations and applications based thereon, the act of June 10, 1920 makes no exceptions.

(c) Any mineral application or location, based upon discoveries made subsequent to June 10, 1920, which is in conflict with lands reserved or classified as power sites, will be rejected by the manager, subject to appeal.

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(d) If the application alleges a valid location made prior to the date of the act of June 10, 1920, and is accompanied by a corroborated statement attesting the fact, the patent proceedings may be prosecuted to completion. The proof should be considered upon its merits, and, if found regular, final certificate may issue although a protest may have been filed by the authorized officer; but the claimant should be advised in such cases that patent will be withheld pending a report upon the bona fides of the claim.

§ 103.4 *Lands occupying status of withdrawn lands.* Lands within final hydroelectric power permits under the act of February 15, 1901 (31 Stat. 790; 43 U. S. C. 959), or transmission-line permits or approved rights-of-way, whether under said act of February 15, 1901, or the act of March 4, 1911 (36 Stat. 1253; 16 U. S. C. 5, 420, 523, 43 U. S. C. 961) are deemed "classified as valuable for power purposes," and, whether withdrawn as power-site reserves or not, occupy the status of withdrawn lands.

GENERAL DETERMINATION UNDER SECTION 24 OF FEDERAL POWER ACT AS TO LANDS APPLIED FOR, OCCUPIED, AND USED FOR TRANSMISSION-LINE PURPOSES

§ 103.5 *General determination; exception.* (a) The executive secretary of the Federal Power Commission having called to the attention of the Commission the desirability of making a general determination under the provisions of section 24 of the Federal Water Power Act[1] with respect to lands of the United States theretofore or thereafter reserved or classified as power sites which are applied for, or occupied and used for, transmission-line purposes only, the Commission at its meeting of April 17, 1922, voted as follows:

(1) That where lands of the United States have heretofore been, or hereafter may be, reserved or classified as power sites, such reservation or classification being made solely because such lands are either occupied by power transmission lines or their occupancy and use for such purposes has been applied for or authorized under appropriate laws of the United States, and such lands have otherwise no value for power purposes, and are not occupied in trespass, the commission determines that the value of such lands so reserved or classified or so applied for or authorized, will not be injured or destroyed for the purposes of power development by location, entry or selection under the public land laws, subject to the reservation of section 24 of the Federal Water Power Act.

(2) That when notice is given to the Secretary of the Interior of reservations made under the provisions of section 24 of the Federal Water Power Act, such notice shall indicate what lands so reserved, if any, may, in accordance with the determination of the preceding paragraph, be declared open to location, entry, or selection subject to the reservation of said section 24.

(b) Where the Bureau finds that lands applied for are occupied in trespass, the application will be referred to the Federal Power Commission for such action as it deems to be appropriate to the particular circumstances existing in the case.

[1] The act of Aug. 26, 1935 (49 Stat. 838; 16 U. S. C. 796 et seq.) amended the Federal Water Power Act of June 10, 1920 (41 Stat. 1063; 16 U. S. C. 791–823) and changed its short title to the "Federal Power Act."

This Circular replaces Circular 1790

Sent copies to CFR holders

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1990]

Replaced by 2002 (11,58)

PART 192—OIL AND GAS LEASES

LEASING OF WILDLIFE REFUGE LANDS, GAME RANGE LANDS AND COORDINATION LANDS

Section 192.9 is revised as follows:

§ 192.9 *Leasing of wildlife refuge lands, game range lands and coordination lands*—(a) *Definitions*—(1) *Wildlife refuge lands.* Such lands are those embraced in a withdrawal of public domain and acquired lands of the United States for the protection of all species of wildlife within a particular area. Sole and complete jurisdiction over such lands for wildlife conservation purposes is vested in the United States Fish and Wildlife Service even though such lands may be subject to prior rights for other public purposes or, by the terms of the withdrawal order, may be subject to mineral leasing.

(2) *Game range lands.* Game ranges created by a withdrawal of public lands and reserved for dual purposes, namely protection and improvement of the public grazing lands and natural forage resources and conservation and development of natural wildlife resources, are under the joint jurisdiction of the Bureau of Land Management and the United States Fish and Wildlife Service.

(3) *Coordination lands.* These lands are withdrawn or acquired by the Government and made available to the States by cooperative agreements entered into between the United States Fish and Wildlife Service and the game commissions of the various States, in accordance with the act of March 10, 1934 (48 Stat. 401), as amended by the act of August 14, 1946 (60 Stat. 1080), or by long-term leases or agreements between the Department of Agriculture and the game commissions of the various States pursuant to the Bankhead-Jones Farm Tenant Act (50 Stat. 525), as amended, where such lands were subsequently transferred to the Department of the Interior, with the United States Fish and Wildlife Service as the custodial agency of the Government.

(4) *Alaska wildlife areas.* Such lands are areas in Alaska created by a withdrawal of public lands for the management of natural wildlife resources and administered by the United States Fish and Wildlife Service.

(b) *Leasing policy and procedure.* (1) No offers for oil and gas leases covering wildlife refuge lands will be accepted and no leases covering such lands will be issued except as provided in subparagraph (2) of this paragraph.

(2) In instances where it is determined by the Geological Survey that any of the lands mentioned in paragraph (a) (1), or any of the lands mentioned in paragraph (a) (2), (3) and (4) of this section and defined in this section as not available for leasing are subject to drainage, the Bureau of Land Management, with the concurrence of the United States Fish and Wildlife Service, will process an offering inviting competitive bids in accordance with the then existing regulations relating to competitive oil and gas leasing. Such leases shall be issued only upon approval by the Secretary of the Interior and shall contain such stipulations as are necessary to assure that leasing activities and drilling shall be carried out in such a manner as will result in a minimum of damage to wildlife resources.

(3) As to game range lands and Alaska wildlife areas, representatives of the appropriate office of the Bureau of Land Management and the United States Fish and Wildlife Service will confer for the purpose of entering into an agreement specifying those lands which shall not be subject to oil and gas leasing. No such agreement shall become effective, however, until approved by the Secretary of the Interior. As to coordination lands, representatives of the Bureau of Land Management and the United States Fish and Wildlife Service will, in cooperation with the authorized members of the various State game commissions, confer for the purpose of determining by agreement those lands which shall not be subject to oil and gas leasing.

(4) The remaining lands in paragraph (a) (2) and (4) of this section not closed to oil and gas leasing will be subject to leasing on the imposition of such stipulations agreed upon by the Fish and Wildlife Service and the Bureau of Land Management. The remaining lands in paragraph (a) (3) of this section not closed to oil and gas leasing will be subject to leasing on the imposition of such stipulations agreed upon by the State Game Commission, the United States Fish and Wildlife Service, and the Bureau of Land Management.

(c) *Publication and filing of agreements; filing of lease offers.* The agreements referred to in paragraph (b) (3) of this section shall be published in the FEDERAL REGISTER and shall contain a description of the lands affected thereby which are not subject to oil and gas leasing, together with a statement of the stipulations agreed upon by the parties thereto for inclusion in such leases to assure that all operations under the lease shall be carried out in such a manner as will result in a minimum of damage to wildlife resources. The agreements, as supplemented by maps or plats specifically delineating the lands will be filed in the appropriate land offices of the Bureau of Land Management where they may be inspected by the public at the usual hours specified for that purpose. Lease offers for such lands will not be accepted for filing until the tenth day after the agreements and supplemental maps or plats are noted on the land office records.

(d) *Suspension of pending applications.* All pending offers or applications heretofore filed for oil and gas leases covering game ranges, coordination lands, and Alaska wildlife areas, will continue to be suspended until the agreements referred to in paragraph (b) (3) of this section shall have been completed.

(e) *Lands in requested withdrawal.* All existing offers or applications for oil and gas leases covering lands included in requests for withdrawals for wildlife refuges, game ranges, coordination lands or Alaska wildlife areas, as defined herein, shall be suspended until after the consummation of the withdrawal, and thereafter such offers shall be considered in accordance with the provisions of this section.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189)

FRED A. SEATON,
Secretary of the Interior.

JANUARY 8, 1958.

[F. R. Doc. 58-274; Filed, Jan. 10, 1958; 8:50 a. m.]

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Circular 1991

Part 232—Desert-Land Entries

AUTHORITY: §§ 232.1 to 232.62 issued under R. S. 2478; 43 U. S. C. 1201.

SOURCE: §§ 231.1 to 231.62 appear at 19 F. R. 9081, Dec. 23, 1954.

CROSS REFERENCES: For amendment to entries affecting desert lands, see §§ 104.9–104.13 of this chapter. For Carey Act grants, see Part 272 of this chapter. For desert-land entries within a reclamation project, see §§ 230.101–230.111 of this chapter. For Flathead irrigation project, Montana, see Part 233 of this chapter. For general regulations relating to applications and entries, see Part 101 of this chapter. For land classifications, see Part 296 of this chapter. For reclamation of arid lands by the United States, see Part 230 of this chapter. For reclamation of arid lands in Nevada, see Part 234 of this chapter. For State irrigation districts, see Part 231 of this chapter. For swamp land grants, see Part 271 of this chapter.

GENERAL STATEMENT

§ 232.1 *Purpose of statutes.* (a) It is the purpose of the statutes governing desert land entries to encourage and promote the reclamation, by irrigation, of the arid and semiarid public lands of the Western States through individual effort and private capital, it being assumed that settlement and occupation will naturally follow when the lands have thus been rendered more productive and habitable.

(b) Such reclamation is often a difficult and expensive undertaking, and desert-land entrymen sometimes find serious difficulty in complying with all the requirements of the law, particularly persons who possess little capital. All claimants should restrict their entries to only that quantity of land which they can reasonably expect to reclaim, even though such area be much less than may be lawfully entered. As the more accessible and easily appropriated streams become exhausted, it becomes necessary to convey water, often for very long distances, from more remote sources of supply; more elaborate and expensive systems of irrigation works are required, the cost of water rights is correspondingly increased, and individuals consequently find it necessary to unite their efforts in various forms of cooperative enterprise in order to secure the necessary capital. Nevertheless, a small tract of land, thoroughly reclaimed, with an adequate water supply obtained from a large, well-constructed irrigation system, may well be considered a very valuable piece of property, and more desirable than a larger tract only partially

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reclaimed or reclaimed from a small, private irrigation system less permanent and efficient in character.

ENTRY

§ 232.2 *States in which desert-land entry may be made.* The act of March 3, 1877 (19 Stat. 377; 43 U. S. C. 321–323), as amended by the act of March 3, 1891 (26 Stat. 1096; 43 U. S. C. 321, 323, 325, 327–329), provides for the making of desert-land entries in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

§ 232.3 *Land that may be entered as desert land.* (a) As the desert-land law requires the artificial irrigation of any land entered thereunder, lands which are not susceptible of irrigation by practicable means are not deemed subject to entry as desert lands. The question as to whether any particular tract sought to be entered as desert land is in fact irrigable from the source proposed by the applicant will be investigated and determined before the application for entry is allowed. In order to be subject to entry under the desert-land law, public lands must be not only irrigable but also surveyed, unreserved, unappropriated, non-mineral (except lands withdrawn, classified, or valuable for coal, phosphate, nitrate, potash, sodium, sulphur, oil, gas, or asphaltic minerals, which may be entered with a reservation of such mineral deposits, as explained in Part 102 of this chapter), nontimbered, and such as will not, without artificial irrigation, produce any reasonably remunerative agricultural crop by the usual means or methods of cultivation. In this latter class are those lands which, one year with another for a series of years, will not without irrigation produce paying crops, but on which crops can be successfully grown in alternate years by means of the so-called dry-farming system. (37 L. D. 522 and 42 L. D. 524.)

(b) Applications to make desert-land entries of lands embraced in applications, permits, or leases under the act of February 25, 1920 (41 Stat. 437), if in all other respects complete, will be treated in accordance with §§ 102.30 to 102.34 of this chapter. Applications to make desert-land entries of lands within a naval petroleum reserve must be rejected, as no desert-land entry may be allowed for such lands.

§ 232.4 *Who may make desert-land entry.* (a) Any citizen of the United States 21 years of age, or any person of that age who has declared his intention of becoming a citizen of the United States, and who can truthfully make the statements specified in §§ 232.8 and 232.9 can make a desert-land entry. Thus, a woman, whether married or single, who possesses the necessary qualifications can make a desert-land entry, and, if married, without taking into consideration any entries her husband may have made.

(b) The citizenship of a married woman must be shown, as required by § 137.2 of this chapter.

(c) At the time of making final proof claimants of alien birth must have been admitted to citizenship, but evidence of naturalization need not be furnished if it has already been filed in connection with the original declaration or with the proof of an assignment of the entry.

§ 232.5 *Quantity of lands that may be entered.* An entry of lands under the act of March 3, 1877, is limited to 320 acres, subject to the following additional limitations:

(a) An entry of lands within an irrigation district which the Secretary of the Interior or his delegate has approved under the act of August 11, 1916 (39 Stat. 506; 43 U. S. C. 621–630), is limited to 160 acres.

(b) An entryman may have a desert-land entry for such a quantity of land as, taken together with all land acquired and claimed by him under the other agricultural land laws since August 30, 1890, does not exceed 320 acres in the aggregate, or 480 acres if he shall have made an enlarged homestead entry of 320 acres (acts of August 30, 1890; 26 Stat. 391; 43 U. S. C. 212; and of February 27, 1917; 39 Stat. 946; 43 U. S. C. 330).

§ 232.6 *Second and additional entries.* A person's right of entry under the desert-land law is exhausted either by filing an allowable application and withdrawing it prior to its allowance or by making an entry or by taking an assignment of an entry, in whole or in part, except under the conditions described in paragraphs (a) and (b) of this section.

(a) Under the act of September 5, 1914 (38 Stat. 712; 43 U. S. C. 182), if a person, otherwise duly qualified to make a desert-land entry, has previously filed an allowable application, or made such entry or entries and through no fault of his own has lost, forfeited, or abandoned the same, such person may make another entry. In such case, however, it must be shown that the prior application, entry, or entries were made in good faith, and were lost, forfeited, or abandoned because of matters beyond the applicant's control, and that the applicant has not speculated in his right, nor committed a fraud or attempted fraud in connection with such prior entry or entries. As the assignment of an entry involves no loss, forfeiture, or abandonment thereof, but carries a benefit to the assignor, it is held to exhaust his right of entry under the desert-land law. Hence, no person who has assigned such entry, in whole or in part, will be permitted to make another entry or to take one or any part thereof by assignment except where paragraph (b) of this section applies.

(b) The act of June 16, 1955 (69 Stat. 138) authorizes any person, who prior to June 16, 1955, made a valid desert-land entry on lands subject to the acts of June 22, 1910 (36 Stat. 583; 30 U. S. C. 83–85), or of July 17, 1914 (38 Stat. 509; 30 U. S. C. 121–123), if otherwise qualified, to enter as a personal privilege, not assignable, an additional tract of desert land, providing such additional tract shall not, together with the original entry, exceed 320 acres. Applicants and entrymen under the act of June 16, 1955, are subject to, and must comply with, all the regulations of this part, including the acreage limitations of § 232.5.

§ 232.7 *Land entered must be in compact form.* Land entered under the desert land laws should be in compact form, which means that it should be as nearly a square form as possible. Where, however, it is impracticable, on account of the previous appropriation of adjoining lands or on account of the topography of the country, to take the land in a compact form, all the facts regarding the situation, location, and character of the land sought to be entered and the surrounding tracts should be stated, in order that the manager may determine whether, under all the circumstances, the entry should be allowed in the form sought. Entrymen should make a complete showing in this regard and should state the facts and not the conclusions they derive from the facts, as it is the province of the manager to determine whether or not, from the facts stated, the entry should be allowed. Under no circumstances, however, can one entry be made for two or more separate tracts or for two tracts which touch each other at only a single point.

§ 232.8 *Entries restricted to surveyed lands since March 28, 1908; claims on unsurveyed lands.* (a) Prior to the act of March 28, 1908 (35 Stat. 52; 43 U. S. C. 324, 326, 333), a desert-land entry could embrace unsurveyed lands, but since the date of that act desert-land entries may not be made of unsurveyed lands. This act provides, however, that any individual qualified to make entry of desert lands under the desert land acts who has, prior to survey, taken possession of a tract of unsurveyed desert land not exceeding in area 320 acres in compact form, and has reclaimed or has in good faith commenced the work of reclaiming the same, shall have the preference right to make entry of such tract under said acts, in conformity with the public-land surveys, within 90 days after the filing of the approved plat of survey in the land office.[1]

(b) To preserve this preference right the work of reclamation must be continued up to the filing of the plat of survey, unless the reclamation of the land is completed before that time, and in that event the claimant must continue to cultivate and occupy the land until the survey is completed and the plat filed. A mere perfunctory occupation of the land, such as staking off the claim or posting notices thereof on the land claimed, will not secure the preference right as against an adverse claimant. While actual settlement and residence upon the land, as required under the homestead law, are not necessary, the possession and improvements must be such as to conform to the requirements of the desert land law and must evidence good faith on the part of the claimant.

[1] Unsurveyed public land withdrawn by Executive Orders Nos. 6910 and 6964 of November 26, 1934, and February 5, 1935, respectively, is not subject to appropriation, under the desert-land laws, until such appropriation has been authorized by classification. See Part 296 of this chapter.

§ 232.9 *Application for desert-land entry.*[2] (a) A person who desires to make entry under the desert-land laws must file with the manager of the proper land office an application, in duplicate, showing that he is a citizen of the United States, or has declared his intention to become such citizen; that he is 21 years of age or over; and that he is a bona fide resident of the State in which the land sought to be entered is located, except in the State of Nevada, where the qualification as to citizenship is that of the United States only (41 Stat. 1086; 43 U. S. C. 323, 325). He must also state that, when § 232.6 (a) and (b) do not apply, he has not previously exercised the right of entry under the desert-land laws by filing an allowable application and withdrawing it prior to its allowance or by making an entry or by having taken one by assignment; that he has personally examined every legal subdivision of the land sought to be entered; that he has not, since August 30, 1890, acquired title, under any of the agricultural land laws, to lands which, together with the land applied for, will exceed in the aggregate 320 acres, or 480 acres in case he has made an enlarged homestead for 320 acres; and that he intends to reclaim the lands applied for by conducting water thereon within 4 years from the date of his application. The application must contain a description of the land by legal subdivisions, section, township, and range. If the application is made for lands, withdrawn or classified as coal lands or for lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, sodium, sulphur, oil, gas, or asphaltic minerals, or valuable therefor, the applicant also must state in his application that the same is made in accordance with and subject to the act of June 22, 1910 (36 Stat. 583; 30 U. S. C. 83–85), or the act of July 17, 1914 (38 Stat. 509; 30 U. S. C. 121–123), as the case may be.

(b) The application will be considered as a petition for the classification of the land as provided in Part 296 of this chapter.

§ 232.10 *Showing required in application as to character of land.* (a) Special attention is called to the terms of this application, as they require a personal knowledge by the entryman of the lands intended to be entered. The showing, which is made a part of the application, may not be made by an agent or upon information and belief, and the manager must reject all applications in which it is not made to appear that the statements contained therein are made upon the applicant's own knowledge, obtained from a personal examination of the land. The blank spaces in the application must be filled in with a complete statement of the facts showing the applicant's acquaintance with the land and how he knows it to be desert land. This declaration must be corroborated by the statements of two reputable witnesses, who also must be personally acquainted with the land, and they must state the facts regarding the condition and situation of the land upon which they base the opinion that it is subject to desert entry.

(b) The statements in the blank form of declaration and accompanying statements as to present character of the land may be modified so as to show the facts in any case wherein application is made for entry of lands reclaimed or partially reclaimed, by applicant, before survey, under the provisions of the act of March 28, 1908; as to a former application or entry, in case application is made for a second entry under the provisions of the act of September 5, 1914; as to the character of the land with respect to coal deposits in case application is made under the provisions of the act of June 22, 1910, for lands withdrawn or classified as coal lands, or valuable for coal; and with respect to phosphate, nitrate, potash, sodium, sulphur, oil, gas, and asphaltic minerals in case application is made under the provisions of the act of July 17, 1914, for lands withdrawn, classified, or reported as containing those substances, or valuable therefor.

§ 232.11 *Post-office addresses of applicants and witnesses.* Applicants and witnesses must in all cases state their places of actual residence, their business or occupation, and their post-office addresses. It is not sufficient to name only the county or State in which a person lives, but the town or city must be named also; and where the residence is in a city the street and number must be given. It is especially important to claimants that upon changing their post-office addresses they promptly notify the manager of such change, for in case of failure to do so their entries may be canceled upon notice sent to the address of record but not received by them.

§ 232.12 *Execution of applications and proofs; time for filing of applications.* (a) Applications and proofs, except final proofs required by R. S. 2294 (43 U. S. C. 254), must be signed by the applicants but need not be under oath. Final proofs may be executed before any officer authorized to administer oaths in public land cases, as explained by § 210.1 of this chapter.

(b) An application to make desert-land entry is not acceptable if dated more than 10 days before its filing at the land office.

§ 232.13 *Evidence of water rights required with application.* No desert-land application will be allowed unless accompanied by evidence satisfactorily showing either that the intending entryman has already acquired by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition of such a right. If applicant intends to procure water from an irrigation district, corporation, or association, but is unable to obtain a contract for the water in advance of the allowance of his entry, then he must furnish, in lieu of the contract, some written assurance from the responsible officials of such district, corporation, or association that, if his entry be allowed, applicant will be able to obtain from that source the necessary water. All applications not accompanied by the evidence above indicated will be rejected.

§ 232.14 *Plan of irrigation and payment; reports.* (a) At the time of filing the application with the manager, the applicant also must file plans describing in detail the following: Source of water supply; character of the irrigation works constructed, in course of construction, or proposed to be constructed, i. e., reservoirs for storage, canals, flumes, or other methods by which water is to be conserved and conveyed to the land; if by direct diversion, the character and volume of the flow of the streams or springs, whether perennially flowing or intermittent. If the works have not been constructed, it must be shown whether they are to be built by an irrigation district, a corporation, or an association, and a general description of the proposed plan must be furnished. It must be shown in connection with any proposed plan whether, and by whom, surveys and investigations have been made which demonstrate the existence of a sufficient water supply and the feasibility of the proposed works to convey water to the land. If the applicant individually, or in association with others, proposes to construct irrigation works, a statement must accompany the application, containing a general description of the proposed works, an estimate of the cost, and such other data as will enable the Department to determine the sufficiency of the water supply and the feasibility of the proposed works to convey water to the lands to be irrigated. If the irrigation is proposed by means of artesian wells or by pumping from nonartesian underground sources of water supply, a statement must be submitted as to the existence of such water supply upon or near the land involved, including information as to other wells theretofore sunk and affording a water supply to adjoining or nearby lands.

(b) With respect to the land itself, a specific showing must be submitted as to its approximate altitude, character of the soil, the approximate irrigable

tion, but is unable to obtain a contract for the water in advance of the allowance of his entry, then he must furnish, in lieu of the contract, some written assurance from the responsible officials of such district, corporation, or association

[2] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

to be filed by section 4 of the act of March 3, 1877, as amended by section 2 of the act of March 3, 1891 (26 Stat. 1096; 43 U. S. C. 327), must be sufficiently definite and accurate (preferably, but not necessarily, prepared by a licensed engineer) to show the plan for conducting water to the land to be irrigated. The manager will carefully examine the evidence submitted in such applications, and either reject defective applications or require additional evidence to be filed.

(c) At the time of filing his application, plans, and the statements submitted therewith the applicant must pay the manager the sum of 25 cents per acre for the lands therein described, the application to be given its proper serial number at that time. No rights to the land are initiated by the filing of an application unless this sum is paid or tendered.

ASSIGNMENT

§ 232.15 *Lands which may be assigned.* While by the act of March 3, 1891 (26 Stat. 1096; 43 U. S. C. 329), assignments of desert-land entries were recognized, the Department of the Interior, largely for administrative reasons, held that a desert-land entry might be assigned as a whole or in its entirety, but refused to recognize the assignment of only a portion of an entry. The act of March 28, 1908, however, provides for an assignment of such entries, in whole or in part, but this does not mean that less than a legal subdivision may be assigned. Therefore no assignment, otherwise than by legal subdivisions, will be recognized. The legal subdivisions assigned must be contiguous.

CROSS REFERENCE: For assignment of desert-land entries within Government reclamation projects, see § 230.108 of this chapter.

§ 232.16 *Qualifications of assignees.* (a) The act of March 28, 1908, also provides that no person may take a desert-land entry by assignment unless he is qualified to enter the tract so assigned to him. Therefore, if a person is not at least 21 years of age and, excepting Nevada, a resident citizen of the State wherein the land involved is located; or if he is not a citizen of the United States, or a person who has declared his intention to become a citizen thereof; or, if he has made a desert-land entry in his own right and is not entitled under § 232.6 to make a second or an additional entry, he cannot take such an entry by assignment. The language of the act indicates that the taking of an entry by assignment is equivalent to the making of an entry, and this being so, no person is allowed to take more than one entry by assignment, unless it be done as the exercise of a right of second or additional entry.

(b) A person who has the right to make a second or additional desert-land entry may exercise that right by taking an assignment of a desert-land entry, or part of such entry, if he is otherwise qualified to make a desert-land entry for the particular tract assigned.

(c) The act of March 28, 1908, also provides that no assignment to or for the benefit of any corporation shall be authorized or recognized.

(69 Stat. 138 and R. S. 2478; 43 U. S. C. 1201)

§ 232.17 *Showing required of assignees; recognition of assignments.* (a) As evidence of the assignment there should be transmitted to the manager the original deed of assignment or a certified copy thereof. Where the deed of assignment is recorded a certified copy may be made by the officer who has custody of the record. Where the original deed is presented to an officer qualified to take proof in desert-land cases, a copy certified by such officer will be accepted.

(b) An assignee must file with his deed of assignment a statement (Form 4–274c), showing his qualifications to take the entry assigned to him. He must show what applications or entries, if any, have been made by him or what entries assigned to him under the agricultural public land laws, and he must also show his qualifications as a citizen of the United States; that he is 21 years of age or over; and also that he is a resident citizen of the State in which the land assigned to him is situated, except in the State of Nevada, where citizenship of the United States only is required. If the assignee is not a native-born citizen of the United States, he should also furnish a statement as to his citizenship status in accordance with Part 137 of this chapter. If the assignee is a woman, she should in all cases state whether she is married, and if so, she must make the showing required by Part 137 of this chapter. Desert-land entries are initiated by the payment of 25 cents per acre, and no assignable right is acquired by the applicant prior to such payment. (6 L. D. 541, 33 L. D. 152.) An assignment made on the day of such payment, or soon thereafter, is treated as suggesting fraud, and such cases will be carefully scrutinized. The provisions of law authorizing the assignment of desert entries, in whole or in part, furnish no authority to a claimant under said law to make an executory contract to convey the land after the issuance of patent and thereafter to proceed with the submission of final proof in furtherance of such contract. (34 L. D. 383.) The sale of land embraced in an entry at any time before final payment is made must be regarded as an assignment of the entry, and in such cases the person buying the land must show that he possesses all the qualifications required of an assignee. (29 L. D. 453.) The assignor of a desert-land entry may execute the assignment before any officer authorized to take acknowledgments of deeds. The assignee must furnish a statement on Form 427c as to his qualifications.

(c) No assignments of desert-land entries or parts of entries are conclusive until examined in the land office and found satisfactory and the assignment recognized. When recognized, however, the assignee takes the place of the assignor as effectively as though he had made the entry, and is subject to any requirement that may be made relative thereto. The assignment of a desert-land entry to one disqualified to acquire title under the desert-land law, and to whom, therefore, recognition of the assignment is refused by the manager, does not of itself render the entry fraudulent, but leaves the right thereto in the assignor. In such connection, however, see 42 L. D. 90 and 48 L. D. 519.

SALE, TAXATION, AND MORTGAGE

§ 232.18 *When lands may be sold, taxed, or mortgaged.* (a) After final proof and payment have been made the land may be sold and conveyed to another person without the approval of the Bureau of Land Management, but all such conveyances are nevertheless subject to the superior rights of the United States, and the title so obtained would fall if it should be finally determined that the entry was illegal or that the entryman had failed to comply with the law.

(b) Lands embraced in unperfected desert-land entries are not subject to taxation by the State authorities, nor to levy and sale under execution to satisfy judgments against the entrymen, except as hereinafter set forth in this section.

(c) Lands embraced in desert-land entries within an irrigation district which the Secretary of the Interior has approved under the act of August 11, 1916 (39 Stat. 506; 43 U. S. C. 621–630), may be taxed and otherwise dealt with as provided by said act, and lands in desert-land entries within irrigation projects constructed under the Reclamation Act may be taxed as provided for by the act of June 13, 1930 (46 Stat. 581; 43 U. S. C. 455, 455a–455c).

(d) A desert-land entryman may, however, mortgage his interest in the entered land if, by the laws of the State in which the land is situated, a mortgage of land is regarded as merely creating a lien thereon and not as a conveyance thereof. The purchaser at a sale had for the foreclosure of such mortgage may be recognized as assignee upon furnishing proof of his qualifications to take a desert-land entry by assignment. Transferees, after final proof, mortgagees, or other encumbrancers may file in the proper land office written notice stating the nature of their claims, and they will thereupon become entitled to receive notice of any action taken by the Bureau of Land Management with reference to the entry.

ANNUAL PROOF

§ 232.19 *Showing required.* (a) In order to test the sincerity and good faith of claimants under the desert-land laws and to prevent the segregation for a number of years of public lands in the interest

of persons who have no intention to reclaim them, Congress, in the act of March 3, 1891 (26 Stat. 1096; 43 U. S. C. 327, 328) made the requirement that a map be filed at the initiation of the entry showing the mode of contemplated irrigation and the proposed source of water supply, and that there be expended yearly for 3 years from the date of the entry not less than $1 for each acre of the tract entered, making a total of not less than $3 per acre, in the necessary irrigation, reclamation, and cultivation of the land, in permanent improvements thereon, and in the purchase of water rights for the irrigation thereof, and that at the expiration of the third year a map or plan be filed showing the character and extent of the improvements placed on the claim. Said act, however, authorizes the submission of final proof at an earlier date than 4 years from the time the entry is made in cases wherein reclamation has been effected and expenditures of not less than $3 per acre have been made.

(b) Yearly or annual proof of expenditures must consist of the statements of "two or more credible witnesses," each of whom must have personal knowledge that the expenditures were made for the purpose stated in the proof. Annual proofs must contain itemized statements showing the manner in which expenditures were made.

§ 232.20 *Acceptable expenditures.* (a) Expenditures for the construction and maintenance of storage reservoirs, dams, canals, ditches, and laterals to be used by claimant for irrigating his land; for roads where they are necessary; for erecting stables, corrals, etc.; for digging wells, where the water therefrom is to be used for irrigating the land; for stock or interest in an approved irrigation company, or for taxes paid to an approved irrigation district, through which water is to be secured to irrigate the land; and for leveling and bordering land proposed to be irrigated, will be accepted. Expenditures for fencing all or a portion of the claim, for surveying for the purpose of ascertaining the levels for canals, ditches, etc., and for the first breaking or clearing of the soil are also acceptable.

(b) The value to be attached to, and the credit to be given for, an expenditure for works or improvements is the reasonable value of the work done or improvement placed upon the land, according to the market price therefor, or for similar work or improvements prevailing in the vicinity, and not the amount alleged by a claimant to have been expended, nor the mere proof of expenditures, as exhibited by checks or other vouchers. (Bradley v. Vasold, 36 L. D. 106.)

§ 232.21 *Expenditures not acceptable.* (a) Expenditures for cultivation after the soil has been first prepared may not be accepted, because the claimant is supposed to be compensated for such work by the crops to be reaped as a result of cultivation. Expenditures for surveying the claim in order to locate the corners of same may not be accepted. The cost of tools, implements, wagons, and repairs to same, used in construction work, may not be computed in cost of construction. Expenditures for material of any kind will not be allowed unless such material has actually been installed or employed in and for the purpose for which it was purchased. For instance, if credit is asked for posts and wire for fences or for pump or other well machinery, it must be shown that the fence has been actually constructed or the well machinery actually put in place. No expenditures can be credited on annual proofs upon a desert-land entry unless made on account of that particular entry, and expenditures once credited can not be again applied. This rule applies to second entries as well as to original entries, and a claimant who relinquishes his entry and makes second entry of the same land under the act of September 5, 1914, can not receive credit on annual proofs upon the second entry for expenditures made on account of the former entry. (41 L. D. 601 and 42 L. D. 523.)

(b) Expenditures for the clearing of the land will not receive credit in cases where the vegetation or brush claimed to have been cleared away has not been actually removed by the roots. Therefore, expenditures for clearing, where as a matter of fact there has been only crushing, or rolling, or what is known in some localities as railing the land, will not be accepted.

(c) No expenditures for stock or interest in an irrigation company, through which water is to be secured for irrigating the land, will be accepted as satisfactory annual expenditure until a field examiner, or other authorized officer, has submitted a report as to the resources and reliability of the company, including its actual water right, and such report has been favorably acted upon by the Bureau of Land Management. The stock purchased must carry the right to water, and it must be shown that payment in cash has been made at least to the extent of the amount claimed as expenditure for the purchase of such stock in connection with the annual proof submitted, and such stock must be actually owned by the claimants at the time of the submission of final proof.

§ 232.22 *Procedure where proof is not made when due.* Managers will examine their records frequently for the purpose of ascertaining whether all annual proofs due on pending desert-land entries have been made, and in every case where the claimant is in default in that respect they will send him notice and allow him 60 days in which to submit such proof. If the proof is not furnished as required the entry will be canceled. During the pendency of a Government proceeding initated by such notice the entry will be protected against a private contest charging failure to make the required expenditures, and such contest will neither defeat the claimant's right to equitably perfect the entry as to the matter of expenditures during the 60 days allowed in the notice nor secure to the contestant a preference right in event the entry be canceled for default under said notice.

§ 232.23 *Extensions of time.*[3] The law makes no provision for extensions of time in which to file annual proof becoming due subsequent to December 31, 1936, on desert-land entries not embraced within the exterior boundaries of any withdrawal or irrigation project under the Reclamation Act of June 17, 1902 (32 Stat. 388), and extensions for said purpose cannot therefore be granted. However, where a township is suspended from entry for the purpose of resurvey thereof the time between the date of suspension and the filing in the local office of the new plat of survey will be excluded from the period accorded by law for the reclamation of land under a desert entry within such township and the statutory life of the entry extended accordingly (40 L. D. 223). During the continuance of the extension the claimant may, at his option, defer the making of annual expenditures and proof thereof.

§ 232.24 *Submission of proof before due dates.* Nothing in the statutes or regulations should be construed to mean that the entryman must wait until the end of the year to submit his annual proof, because the proof may be properly submitted as soon as the expenditures have been made. Proof sufficient for the 3 years may be offered whenever the amount of $3 an acre has been expended in reclaiming and improving the land, and thereafter annual proof will not be required.

FINAL PROOF

§ 232.25 *General requirements.* The entryman, his assigns, or, in case of death, his heirs or devisees, are allowed 4 years from date of the entry within which to comply with the requirements of the law as to reclamation and cultivation of the land and to submit final

[3] Extensions of time for making desert-land proofs were authorized by the acts of June 16, 1933 (48 Stat. 274; 43 U. S. C. 256a), July 26, 1935 (49 Stat. 504; 43 U. S. C., 256a), and June 16, 1937 (50 Stat. 303; 43 U. S. C. 256a). Such acts affect only proofs becoming due on or before December 31, 1936. For that reason, the regulations which were issued thereunder have not been included in this chapter. The regulations were issued as Circs. 1311, 1365, and 1432, respectively.

proof, but final proof may be made and patent thereon issued as soon as there has been expended the sum of $3 per acre in improving, reclaiming, and irrigating the land, and one-eighth of the entire area entered has been properly cultivated and irrigated, and when the requirements of the desert-land laws as to water rights and the construction of the necessary reservoirs, ditches, dams, etc., have been fully complied with.

§ 232.26 *Notice of intention to make final proof.* When an entryman has reclaimed the land and is ready to make final proof, he should apply to the manager for a notice of intention to make such proof. This notice must contain a complete description of the land, give the number of the entry and name of the claimant, and must bear an endorsement specifically indicating the source of his water supply. If the proof is made by an assignee, his name, as well as that of the original entryman, should be stated. It must also show when, where, and before whom the proof is to be made. Four witnesses may be named in this notice, two of whom must be used in making proof. Care should be exercised to select as witnesses persons who are familiar, from personal observation, with the land in question, and with what has been done by the claimant toward reclaiming and improving it. Care should also be taken to ascertain definitely the names and addresses of the proposed witnesses, so that they may correctly appear in the notice.

§ 232.27 *Publication of final-proof notice.* The manager will issue the usual notice for publication. This notice must be published once a week for five successive weeks in a newspaper of established character and general circulation published nearest the lands (see 38 L. D. 131; 43 L. D. 216). The claimant must pay the cost of the publication, but it is the duty of managers to procure the publication of proper final-proof notices. The date fixed for the taking of the proof must be at least 30 days after the date of first publication. Proof of publication must be made by the statement of the publisher of the newspaper or by some one authorized to act for him.

§ 232.28 *Submission of final proof.* On the day set in the notice (or, in the case of accident or unavoidable delay, within 10 days thereafter), and at the place and before the officer designated, the claimant will appear with two of the witnesses named in the notice and make proof of the reclamation, cultivation, and improvement of the land. The testimony of each claimant should be taken separately and apart from and not within the hearing of either of his witnesses, and the testimony of each witness should be taken separately and apart from and not within the hearing of either the applicant or of any other witness, and both the applicant and each of the witnesses should be required to state, in and as a part of the final-proof testimony given by them, that they have given such testimony without any actual knowledge of any statement made in the testimony of either of the others. In every instance where, for any reason whatever, final proof is not submitted within the 4 years prescribed by law, or within the period of an extension granted for submitting such proof, a statement should be filed by claimant, with the proof, explaining the cause of delay.

The final proof may be made before any officer authorized to administer oaths in public land cases, as explained in § 210.1 of this chapter.

§ 232.29 *Showing as to irrigation system.* The final proof must show specifically the source and volume of the water supply and how it was acquired and how it is maintained. The number, length, and carrying capacity of all ditches to and on each of the legal subdivisions must also be shown. The claimant and the witnesses must each state in full all that has been done in the matter of reclamation and improvements of the land, and must answer fully, of their own personal knowledge, all of the questions contained in the final-proof blanks. They must state plainly whether at any time they saw the land effectually irrigated, and the different dates on which they saw it irrigated should be specifically stated.

§ 232.30 *Showing as to lands irrigated and reclaimed.* While it is not required that all of the land shall have been actually irrigated at the time final proof is made, it is necessary that the one-eighth portion which is required to be cultivated shall also have been irrigated in a manner calculated to produce profitable results, considering the character of the land, the climate, and the kind of crops being grown. (Alonzo B. Cole, 38 L. D. 420.) The cultivation and irrigation of the one-eighth portion of the entire area entered may be had in a body on one legal subdivision or may be distributed over several subdivisions. The final proof must clearly show that all of the permanent main and lateral ditches necessary for the irrigation of all the irrigable land in the entry have been constructed so that water can be actually applied to the land as soon as it is ready for cultivation. If pumping be relied upon as the means of irrigation, the plant installed for that purpose must be of sufficient capacity to render available enough water for all the irrigable land. If there are any high points or any portions of the land which for any reason it is not practicable to irrigate, the nature, extent, and situation of such areas in each legal subdivision must be fully stated. If less than one-eighth of a smallest legal subdivision is practically susceptible of irrigation from claimant's source of water supply and no portion thereof is used as a necessary part of his irrigation scheme, such subdivision must be relinquished. (43 L. D. 269.)

§ 232.31 *Showing as to tillage of land.* As a rule, actual tillage of one-eighth of the land must be shown. It is not sufficient to show only that there has been a marked increase in the growth of grass or that grass sufficient to support stock has been produced on the land as a result of irrigation. If, however, on account of some peculiar climatic or soil conditions, no crops except grass can be successfully produced, or if actual tillage will destroy or injure the productive quality of the soil, the actual production of a crop of hay of merchantable value will be accepted as sufficient compliance with the requirements as to cultivation. (32 L. D. 456.) In such cases, however, the facts must be stated and the extent and value of the crop of hay must be shown, and, as before stated, that same was produced as a result of actual irrigation.

§ 232.32 *Showing as to water right.* (a) In every case where the claimant's water right is founded upon contract or purchase the final proof must embrace evidence which clearly establishes the fact and legal sufficiency of that right. If claimant's ownership of such right has already been evidenced in connection with the original entry or some later proceeding, then the final proof must show his continued possession thereof. If the water right relied on is obtained under claimant's appropriation, the final proof, considered together with any evidence previously submitted in the matter, must show that the claimant has made such preliminary filings as are required by the laws of the State in which the land is located, and that he has also taken all other steps necessary under said laws to secure and perfect the claimed water right. In all cases the water right, however it be acquired, must entitle the claimant to the use of a sufficient supply of water to irrigate successfully all the irrigable land embraced in his entry, notwithstanding that the final proof need only show the actual irrigation of one-eighth of that area.

(b) In those States where entrymen have made applications for water rights and have been granted permits but where no final adjudication of the water right can be secured from the State authorities owing to delay in the adjudication of the watercourses or other delay for which the entrymen are in no way responsible, proof that the entrymen have done all that is required of them by the laws of the State, together with proof of actual irrigation of one-eighth of the land embraced in their entries, may be accepted. This modification of the rule that the claimant must furnish evidence of an absolute water right will apply only in those States where under the local laws it is impossible for the entryman to secure final evidence of title to his water right within the time allowed him to submit final proof on his entry, and in such cases the best evidence obtainable must be furnished. (35 L. D. 305.)

(c) It is a well-settled principle of law in all of the States in which the desert land acts are operative that actual application to a beneficial use of water appropriated from public streams measures the extent of the right to the water, and that failure to proceed with reasonable diligence to make such application to beneficial use within a reasonable time constitutes an abandonment of the right. (Wiel's Water Rights in the Western States, sec. 172.) The final proof, therefore, must show that the claimant has exercised such diligence as will, if continued, under the operation of this rule result in his definitely securing a perfect right to the use of sufficient water for the permanent irrigation and reclamation of all of the irrigable land in his entry To this end the proof must at least show that water which is being diverted from its natural course and claimed for the specific purpose of irrigating the lands embraced in claimant's entry, under a legal right acquired by virtue of his own or his grantor's compliance with the requirements of the State laws governing the appropriation of public waters, has actually been conducted through claimant's main ditches to and upon the land; that one-eighth of the land embraced in the entry has been actually irrigated and cultivated; that water has been brought to such a point on the land as to readily demonstrate that the entire irrigable area may be irrigated from the system; and that claimant is prepared to distribute the water so claimed over all of the irrigable land in each smallest legal subdivision in quantity sufficient for practical irrigation as soon as the land shall have been cleared or otherwise prepared for cultivation. The nature of the work necessary to be performed in and for the preparation for cultivation of such part of the land as has not been irrigated should be carefully indicated, and it should be shown that the said work of preparation is being prosecuted with such diligence as will permit of beneficial application of appropriated water within a reasonable time.

(d) Desert-land claimants should bear in mind that a water right and a water supply are not the same thing and that the two are not always or necessarily found together. Strictly speaking, a perfect and complete water right for irrigation purposes is confined to and limited by the area of land that has been irrigated with the water provided thereunder. Under the various State laws, however, an inchoate or incomplete right may be obtained which is capable of ripening into a perfect right if the water is applied to beneficial use with reasonable diligence. A person may have an apparent right of this kind for land which he has not irrigated, and which, moreover, he never can irrigate because of the lack of available water to satisfy his apparent right. Such an imperfect right, of course, cannot be viewed as meeting the requirements of the desert-land law which contemplates the eventual reclamation of all the irrigable land in the entry. Therefore, and with special reference to that portion of the irrigable land of an entry not required to be irrigated and cultivated before final proof, an incomplete (though real) water right will not be acceptable if its completion appears to be impossible because there is no actual supply of water available under the appropriation in question.

§ 232.33 *Showing where water supply is derived from irrigation project.* (a) Where the water right claimed in any final proof is derived from an irrigation project it must be shown that the entryman owns such an interest therein as entitles him to receive from the irrigation works of the project a supply of water sufficient for the proper irrigation of the land embraced in his entry. Investigations by field examiners as to the resources and reliability, including particularly the source and volume of the water supply, of all irrigation companies, associations, and districts through which desert-land entrymen seek to acquire water rights for the reclamation of their lands are made, and it is the purpose of the Bureau of Land Management to accept no annual or final proofs based upon such a water right until an investigation of the company in question has been made and report thereon approved. The information so acquired will be regarded as determining, at least tentatively, the amount of stock or interest which is necessary to give the entryman a right to a sufficient supply of water; but the entryman will be permitted to challenge the correctness of the report as to the facts alleged and the validity of its conclusions and to offer, either with his final proof or subsequently, such evidence as he can tending to support his contentions.

(b) Entrymen applying to make final proof are required to state the source of their water supply, and if water is to be obtained from the works of an irrigation company, association, or district the manager will endorse the name and address of the project upon the copy of the notice to be forwarded to the area administrator. If the report on the company has been acted upon by the Bureau of Land Management and the proof submitted by claimant does not show that he owns the amount of stock or interest in the company found necessary for the area of land to be reclaimed, the manager will suspend the proof, advise the claimant of the requirements made by the Bureau of Land Management in connection with the report, and allow him 30 days within which to comply therewith or to make an affirmative showing in duplicate and apply for a hearing. In default of any action by him within the specified time the manager will reject the proof, subject to the usual right of appeal.

§ 232.34 *Final-proof expiration notice.* (a) Where final proof is not made within the period of 4 years, or within the period for which an extension of time has been granted, the claimant will be allowed 90 days in which to submit final proof. (44 L. D. 364.)

(b) Should no action be taken within the time allowed, the entry will be canceled. The 90 days provided for in this section must not be construed as an extension of time or as relieving the claimant from the necessity of explaining why the proof was not made within the statutory period or within such extensions of that period as have been specifically granted.

§ 232.35 *Requirements where township is suspended for resurvey.* No claimant will be required to submit final proof while the township embracing his entry is under suspension for the purpose of resurvey. (40 L. D. 223.) This also applies to annual proof. In computing the time when final proof on an entry so affected will become due the period between the date of suspension and the filing in the local office of the new plat of survey will be excluded. However, if the claimant so elects, he may submit final proof on such entry notwithstanding the suspension of the township.

CROSS REFERENCE: For resurveys, see Part 281 of this chapter.

EXTENSIONS OF TIME FOR FINAL PROOFS; ACTS OF MARCH 28, 1908, APRIL 30, 1912, AND FEBRUARY 25, 1925

§ 232.36 *General acts authorizing extensions of time.*[4] There are five general acts of Congress which authorize the allowance, under certain conditions, of an extension of time for the submission of final proof by a desert-land claimant. Said acts are the following: June 27, 1906 (Sec. 5, 34 Stat. 520; 43 U. S. C. 448); March 28, 1908 (Sec. 3, 35 Stat. 52; 43 U. S. C. 333); April 30, 1912 (37 Stat. 106; 43 U. S. C. 334); March 4, 1915 (Sec. 5, 38 Stat. 1161; 43 U. S. C. 335); and February 25, 1925 (43 Stat. 982; 43 U. S. C. 336). The act of June 27, 1906, is applicable only to entries

[4] In addition to the acts cited in this section, extensions of time for making desert-land proofs were authorized by the acts of June 16, 1933 (48 Stat. 274; 43 U. S. C. 256a), July 26, 1935 (49 Stat. 504; 43 U. S. C. 256a), and June 16, 1937 (50 Stat. 303; 43 U. S. C. 256a). Such acts affect only proofs becoming due on or before December 31, 1936. For that reason, the regulations which were issued thereunder have not been included in this chapter. The regulations were issued as Circs. Nos. 1311, 1365, and 1432, respectively.

embraced within the exterior limits of some withdrawal or irrigation project under the Reclamation Act of June 17, 1902 (32 Stat. 388). For regulations governing extensions under said act of June 27, 1906, see §§ 230.113 to 230.119 of this chapter. The act of March 4, 1915, is applicable only to entries made prior to March 4, 1915; and while authorizing in certain cases an additional extension to claimants who have had one or more extensions under previous laws, this act denies any extension under its terms to claimants who can obtain such benefit under prior acts.

CROSS REFERENCE: For regulations under the act of March 4, 1915, see §§ 232.39 to 232.41.

§ 232.37 *When extensions of time may be granted.* (a) Under the provisions of the act of March 28, 1908 (35 Stat. 52; 43 U. S. C. 333), the period of 4 years may be extended, in the discretion of the authorized officer, for an additional period not exceeding 3 years, if, by reason of some unavoidable delay in the construction of the irrigating works intended to convey water to the land, the entryman is unable to make proof of reclamation and cultivation required within the 4 years. This does not mean that the period within which proof may be made will be extended as a matter of course for 3 years. Applications for extension under said act will not be granted unless it be clearly shown that the failure to reclaim and cultivate the land within the regular period of 4 years was due to no fault on the part of the entryman but to some unavoidable delay in the construction of the irrigation works for which he was not responsible and could not have readily foreseen. (37 L. D. 332.) It must also appear that he has complied with the law as to annual expenditures and proof thereof.

(b) Under the provisions of the act of April 30, 1912 (37 Stat. 106; 43 U. S. C. 334), a further extension of time may be granted for submitting final proof, not exceeding 3 years, where it is shown that, because of some unavoidable delay in the construction of irrigation works intended to convey water to the land embraced in his entry, the claimant is, without fault on his part, unable to make proof of the reclamation and cultivation of said lands within the time limited therefor, but such further extension can not be granted for a period of more than 3 years nor affect contests initiated for a valid existing reason.

(c) An entryman who has complied with the law as to annual expenditures and proof thereof and who desires to make application for extension of time under the provisions of the act of March 28, 1908, should file with the manager a statement setting forth fully the facts, showing how and why he has been prevented from making final proof of reclamation and cultivation within the regular period. This statement must be corroborated by two witnesses who have personal knowledge of the facts.

(d) Applications for further extension of time under the act of April 30, 1912, and February 25, 1925 (43 Stat. 982; 43 U. S. C. 336), may be made in the same manner, and the same procedure will be followed with respect to such applications as under the act of March 28, 1908, and the act of March 4, 1915 (38 Stat. 1161; 43 U. S. C. 335), as amended.

§ 232.38 *Procedure on applications for extensions of time, where contest is pending.* (a) A pending contest against a desert-land entry will not prevent the allowance of an application for extension of time, where the contest affidavit does not charge facts tending to overcome the prima facie showing of right to such extension. (41 L. D. 603.)

(b) Consideration of an application for extension of time will not be deferred because of the pendency of a contest against the entry in question unless the contest charges be sufficient, if proven, to negative the right of the entryman to an extension of time for making final proof. If the contest charges be insufficient, the application for extension, where regular in all respects, will be allowed and the contest dismissed subject to the right of appeal, but without prejudice to the contestant's right to amend his charges.

RELIEF; ACT OF MARCH 4, 1915

§ 232.39 *General statement.* The last three paragraphs of section 5 of the act of Congress approved March 4, 1915 (38 Stat. 1161), entitled "An act making appropriations to supply deficiencies in appropriations for the fiscal year 1915 and for prior years, and for other purposes," as amended by the act of March 21, 1918 (40 Stat. 458; 43 U. S. C. 335, 337, 338), authorize the Secretary of the Interior, under rules and regulations to be prescribed by him, to grant relief to certain classes of desert-land claimants. This law provides that upon certain conditions such an entryman, or his duly qualified assignee, may obtain an extension of time, not exceeding 3 years from date of its allowance, in which to submit final proof; or that upon certain other conditions he may either complete his entry in the manner required of a homestead claimant or purchase the land on special terms.

§ 232.40 *Applications for relief.* (a) All applications for the benefits of section 5 of the act of March 4, 1915, as amended, should be filed prior to the expiration of the time within which the applicant would otherwise be required to make final proof on his desert-land entry in the land office for the district in which the entered lands are situated. They must be supported by the statement of the applicant, corroborated by two witnesses, as to the material facts necessary to be shown.

(b) All such applications should contain the name of the entryman and the date of the entry, and, if the entry has been assigned, the name of the assignee and date of the assignment; the description of the land involved; a statement of the various sums of money expended by the applicant or his grantors in an endeavor to reclaim the land, and the particular purpose for which each sum was expended; the facts by reason of which it has been impossible for claimant to effect reclamation and cultivation and to submit final proof within the usual period, or such extensions thereof as may have been granted; and the facts by reason of which the applicant considers that there is or is not, as the case may be, a reasonable prospect that if an extension of time is granted him, he will be able to secure a sufficient water supply and make final proof of reclamation, irrigation, and cultivation, as required by the desert land law.

§ 232.41 *Conditions for extensions of time.* (a) To entitle an entryman to the benefits of the first of the last three paragraphs of section 5 of the act of March 4, 1915, as amended, the following conditions must exist: (1) The entry must be a lawful, pending entry made prior to March 4, 1915; (2) the entryman must have complied with the requirements of the desert land law with reference to yearly expenditures and the submission of annual proofs thereof; (3) there must be a reasonable prospect that if an extension of time is granted the claimant will be able to make the final proof of reclamation, irrigation, and cultivation as required by law; (4) the case must be one in which an extension of time or a further extension can not properly be allowed under other laws; and (5) there must be established, some fact or facts constituting a reasonable excuse for the applicant's failure to comply with the law within the usual time and fairly entitling him, in justice and equity, to this form of relief.

(b) The existence of the conditions set forth in paragraph (a) (1) and (2) of this section, can be determined by examination of the records of the Bureau of Land Management, but in order that applicants may have the benefit of every possible circumstance entitling them to equitable consideration, they are privileged to make such further showing as they may desire as to any moneys which they may have expended in improving the land, but not used as the basis of annual proof.

(c) The existence of the conditions enumerated in paragraph (a) (3), (4), and (5) of this section, must be established in all cases by the statements filed in support of the application for relief.

(d) With regard to the condition set forth in paragraph (a) (3) of this section, it must be shown what steps the applicant has taken to secure a water

right; and either that he has secured such a right (so far as that is possible, under the State laws, in cases where beneficial application of the water to the land has not yet been made), or that there is no reason to doubt that he will be able to secure such a right before his final proof is due; that the source of water supply, if a natural stream, will, in ordinary seasons, furnish the amount of water needed by the claimant to reclaim the irrigable land in his entry after all appropriations prior to his have been satisfied; and, if water is to be taken from wells, that there is reason to believe that an adequate supply can be obtained from that source.

(e) If water is to be obtained through an irrigation company, association, or district upon which a favorable report has been made, and favorable action on such report has been taken, the existence of the condition in paragraph (a) (3) of this section will be taken for granted, provided the applicant shows that he has become the owner of the required amount of stock or interest in the project, or taken the required steps to secure the inclusion of the land in the district, or that it will be entirely possible for him to do the one or the other, as the case may be.

(f) If an adverse report has been made on the irrigation project in question, or if adverse action thereon has been taken, the applicant may present such showing of facts as may tend to refute the findings made and the conclusions reached, whereupon, if the allegations seem to warrant such action, a hearing will be ordered to determine the merits of the case.

(g) The condition set forth in paragraph (a) (4) of this section will be satisfied if the case does not come within the terms of any of the other acts of Congress providing for the allowance of extensions of time for submitting final proof on desert-land entries.

(h) The extension of time authorized by the act of March 4, 1915, is applicable only to entries made prior to the date of the act. Where the irrigation works intended to convey water to the land have been completed, or for any other reason, the claimant's inability to submit final proof can not be attributed to unavoidable delay in the construction of such irrigation works; where the cause of delay in submitting the final proof is the claimant's temporary inability to acquire water right; or where, on account of drought of greater or less duration, but not likely, in all probability, to be a permanent condition, the operation of a completed system of irrigation works has been hindered or delayed, an application for an extension of time under the first paragraph of the act of March 4, 1915, as amended by the act of March 21, 1918, above cited, can be entertained, except where the entered lands have been included within the exterior limits of a withdrawal or irrigation project under the act of June 17, 1902 (32 Stat. 388), and the submission of satisfactory final proof is being hindered or delayed thereby, so that the case comes within the provisions of the fifth section of the act of June 27, 1906 (34 Stat. 520; 43 U. S. C. 448).

(i) No application for extension of time can be allowed, however, if it appears that the claimant's inability to submit final proof as required by the desert-land law is due to his own neglect or default; nor will any such application be granted where it appears that there is no reasonable prospect that the applicant will be able to provide a supply of water sufficient to irrigate and permanently reclaim all the irrigable land embraced in his entry, because, in such a case, no extension of time can enable the entryman to comply with the requirements of the desert-land law.

§ 232.42 *Relief by homestead proof, or purchase.* The last two paragraphs of section 5 of the act of March 4, 1915 (38 Stat. 1161; 43 U. S. C. 337, 338) are designed to afford relief in cases of the kind last mentioned in the preceding section. The area administrator is authorized, in his discretion, to permit the applicant to perfect his entry in the manner required of a homestead entryman, or to purchase the land on the terms specified, as the applicant may elect. The entry itself is not transmuted, however, but remains a desert-land entry, subject to a new kind of proof.

§ 232.43 *Conditions authorizing homestead proof and purchase.* (a) To entitle a claimant to relief under either of the last two paragraphs of section 5 of the act of March 4, 1915, as amended, it must be made to appear to the satisfaction of the authorized officer: (1) That the entry in question is a lawful pending entry, made prior to March 4, 1915; (2), where application for relief is made on behalf of an assignee, that the entry was assigned to him prior to March 21, 1918; (3), that the applicant or his assignors have, in good faith, expended the sum of $3 per acre in the attempt to effect reclamation of the entered land; and, (4), that there is no reasonable prospect that if the extension of time authorized under the provisions of this act, or any other existing law, were granted the applicant would be able to secure water sufficient to effect reclamation of the land in his entry or any subdivision thereof.

(b) The conditions of paragraph (a) (1) and (2) of this section can be determined from the records of the Bureau of Land Management.

(c) With regard to the condition of paragraph (a) (3) of this section, any expenditure which the claimant can show that he has made in good faith and with a reasonable belief that it would tend to effect reclamation of the land will be acceptable even though such expenditure may not have been such as would satisfy the requirements for annual proof.

(d) With regard to the condition of paragraph (a) (4) of this section, the applicant should show what steps he has taken for the purpose of acquiring a water right and with what result, what has been done by himself or others toward the development of a water supply and the construction of an irrigation system to bring the water to the land, the reasons for his failure to secure an adequate water supply, and his grounds for believing that there is no reasonable prospect of final success in acquiring such a supply. In this connection consideration will be given to any reports on file regarding any irrigation company or irrigation district from which applicant has been endeavoring to secure water and if it appears therefrom that there is no reasonable prospect that the applicant can secure a sufficient water supply, the existence of that condition will be taken for granted.

§ 232.44 *Notice of allowance of relief; election to purchase.* When any application for relief under the second of the last three paragraphs of section 5 of the act of March 4, 1915 (38 Stat. 1161; 43 U. S. C. 337), as amended, shall have been allowed by the manager, notice thereof will be served upon the claimant, advising him that he will be allowed 5 years from date of service of such notice within which to perfect his entry in the manner required of a homestead entryman, unless he shall, within 60 days from receipt of such notice, file in the district land office an election to perfect the entry within 5 years by purchase under the third paragraph, and pay to the manager, at time of election, the sum of 50 cents for each acre embraced in the entry. Such election, if filed, must be in writing, signed by the claimant, and his signature thereto must be witnessed by two persons, whose post-office addresses shall be given. The election must bear the serial number of the entry to which it relates, and also the number of the receipt issued for the money paid in connection therewith.

§ 232.45 *Procedure for final proofs in relief cases.* In the submission and consideration of final proofs under the last two paragraphs of section 5 of the act of March 4, 1915, as amended, the usual course of procedure with regard to desert-land final proofs will be followed, so far as applicable. The notice of intention to submit proof, however, should indicate whether the entry is to be perfected as in homestead cases or by purchase.

§ 232.46 *No assignment allowed after relief has been granted.* After a desert-land entry has been authorized to be perfected either in the manner of a homestead entry or by purchase, no assign-

ment thereof will be allowed, for the reason that the benefits of the last two paragraphs of section 5 of the act of March 4, 1915, as amended by the act of March 21, 1918, are not available to assignees under assignments made subsequently to the date of the act, as amended; and in the final adjudication of entries being perfected under the provisions of said paragraphs the same rules will be observed, as to proof of nonalienation, as in homestead cases.

§ 232.47 *Entries perfected by compliance with homestead law.* (a) A claimant who has received permission to perfect his entry in the manner required of homestead entrymen may make proof at any time when he can show that residence and cultivation have been maintained in good faith for the required length of time and to the required extent.

(b) However, inasmuch as the homestead laws do not authorize the commutation of homesteads made under the Enlarged Homestead Acts, commutation proof will not be accepted upon any desert-land entry involving more than 160 acres. In addition to the original payment of 25 cents per acre at time of entry, a claimant who makes commutation proof must pay for the land at the regular "minimum price" of $1.25 per acre.

(c) Failure to submit final proof within the 5-year period allowed by the law will be ground for the cancellation of the entry, unless good reason for the delay can be shown, in which event final certificate may be issued and the case referred to the Director, Bureau of Land Management, for confirmation.

CROSS REFERENCE: For the confirmation of entries, see Part 107 of this chapter.

(d) Those provisions of the homestead law which define the personal qualifications required of entrymen do not apply to cases of this kind, but the final proof must show that the claimant possesses the same qualifications as to citizenship and the amount of land entered by him or assigned or patented to him, under the agricultural public land laws, as in the case of those who make ordinary final proof on desert-land entries.

§ 232.48 *Residence and improvements for homestead proof.* (a) If not already residing on his desert-land entry, the claimant must establish residence thereon within 6 months from the date of receiving the notice advising him that he will be permitted to perfect his entry under the second of the last three paragraphs of section 5 of the act of March 4, 1915, as amended, unless such period be extended as permitted by the homestead law.

(b) Residence upon the land must be continuously maintained for a period of 3 years from and after the date of its establishment. During each year the claimant may be absent for two periods only, the aggregate thereof not to exceed 5 months. Actual residence must be maintained for the remaining 7 months of each year. If commutation proof is submitted, substantially continuous residence upon the land for a period of 14 months must be shown, together with the cultivation of not less than one-sixteenth of the area of the entry, unless a reduction of the area required to be cultivated be allowed. The requirements as to the period of residence and amount of cultivation are those of the act of June 6, 1912 (37 Stat. 123; 43 U. S. C. 164, 169, 218), or the "3-year homestead law."

(c) If a claimant establishes residence upon his entry prior to the allowance of his application for relief, and continues to maintain it in good faith as required by the homestead law, full credit will be allowed for the period during which such residence is so maintained.

(d) Leaves of absence and credit for military service will be allowed upon the same terms and conditions as in case of a homestead entry.

(e) The claimant must have a habitable house upon the land at the time of submitting final proof. Other improvements should be of such character and amount as are sufficient to show good faith.

CROSS REFERENCE: For residence and cultivation requirements under the homestead laws, see §§ 166.22 to 166.43 of this chapter.

§ 232.49 *Cultivation for homestead proof.* Cultivation of the land for at least 2 years is required, and this must generally consist of actual breaking of the soil, followed by planting, sowing of seed, and tillage for a crop other than native grasses. However, tilling of the land, or other appropriate treatment, for the purpose of conserving the moisture with a view of making a profitable crop the succeeding year, will be deemed cultivation within the terms of the act (without sowing of seed) where that manner of cultivation is necessary or generally followed in the locality. During the second year not less than one-sixteenth of the area entered must be actually cultivated, and during the third year, and until final proof, cultivation of not less than one-eighth must be had. These requirements are applicable to all cases, without regard to the area or location of the entry. The period of cultivation, like that of residence, may begin before the allowance of the application for relief; credit for all cultivation, if in accordance with the provisions of the 3-year homestead law, will be allowed, without regard to the time when it was performed.

§ 232.50 *Homestead proof on entries in Utah and Idaho.* If the entry is situated in the State of Utah or Idaho, and the lands involved have been, or shall be, designated as being of the character subject to entry under the sixth section of the act of February 19, 1909 (35 Stat. 639; 43 U. S. C. 218) as amended, or June 17, 1910 (36 Stat. 531; 43 U. S. C. 219), respectively, the entryman may avail himself of the privileges of these sections, upon a proper showing of the character of the land, as required of a homestead applicant thereunder, in which event residence need not be maintained upon the land, but the amount of cultivation required is double that in ordinary cases and must be shown during a period of 4 years.

§ 232.51 *Heirs and devisees; reduction of cultivation.* (a) If an entryman dies before being authorized to exercise the rights conferred by the last two paragraphs of section 5 of the act of March 4, 1915 (38 Stat. 1161; 43 U. S. C. 337, 338), as amended, or after such authorization but before he has perfected his entry, his rights will pass to those persons who would inherit his lands according to the laws of the State wherein the entry is located or, if he leaves a will, to those to whom he devises such rights. Applications for the benefits of the said act of March 4, 1915, may be filed, and proofs thereunder may be submitted either by one of the heirs in behalf of all, by a guardian of the heirs' estate if they themselves are minors, or by the entryman's executor or administrator, acting under the supervision of the proper probate court.

(b) The heirs or devisees will not be required to settle or reside upon the land, but must show that the land has been cultivated and improved by them or on their behalf, as required by the homestead law, for such period as will, when added to the entryman's period of compliance with the law, aggregate the required term of 3 years. If they desire to commute the entry, they must show a 14 months' period of such residence and cultivation on the part of themselves or the entryman, or both, as would have been required of him had he survived.

(c) With regard to the reduction of the required area of cultivation, the same rules and procedure will be followed as in homestead cases.

§ 232.52 *Fees.* The same fees, and no others, may be charged by managers upon submission of final proofs under section 5 of the act of March 4, 1915, as amended, as upon submission of ordinary desert-land proofs. No commissions may be charged under any circumstances and no testimony fees unless the proof is taken at the land office.

§ 232.53 *Entries perfected by purchase.* If claimant elects to perfect his entry under the last paragraph of sec-

tion 5 of the act of March 4, 1915 (38 Stat. 1161; 43 U. S. C. 338), as amended, he must, within 5 years from the date of his election and payment of the sum of 50 cents per acre, make final proof and pay to the manager the further sum of 75 cents for each acre of land embraced in his entry. The final proof, in order to be acceptable, must show that, at the date of the proof, the claimant has upon the tract permanent improvements conducive to the agricultural development thereof, of the value of at least $1.25 per acre, and that he has in good faith used the land for agricultural purposes for at least 3 years. Under said last paragraph grazing will be regarded as an agricultural use, provided it be established that the land is best suited to that purpose and has been so used in good faith. Actual residence on the land need not be shown.

§ 232.54 *Credit for improvements used as the basis for annual proof.* Improvements made during the first 3 years of the life of the entry and used as the basis of annual proof, if permanent in character and conducive to the agricultural development of the land, may be counted as improvements required to be shown under the last paragraph of section 5 of the act of March 4, 1915, as amended, provided their character and continued existence are satisfactorily established by the final proof; but no water rights or irrigation ditches will be recognized for this purpose unless it is clearly shown that they have been made actually conducive to the agricultural development of the land, or a portion thereof, and that that fact is not inconsistent with the truth of the claimant's preliminary showing that there was no reasonable prospect that he could acquire a sufficient water supply to irrigate the irrigable land of his entry.

§ 232.55 *Penalty for failure to make final proof and payment.* If a claimant fails to make final proof and payment, as required by the last paragraph of section 5 of the act of March 4, 1915, as amended, within the 5-year period, all sums theretofore paid by him will be forfeited and the entry canceled.

§ 232.56 *Forms of proofs.* Final proofs under the second of the last three paragraphs of section 5 of the act of March 4, 1915, as amended, may be made on the forms used in homestead cases. For final proofs to be made under the last paragraph special forms have been provided.

RELIEF; ACT OF FEBRUARY 14, 1934

§ 232.57 *Applications for relief; initial payment required.* (a) The act of February 14, 1934 (48 Stat. 349; 43 U. S. C. 339), entitled "An act to amend an act approved March 4, 1929 (45 Stat. 1548), entitled 'An act to supplement the last three paragraphs of section 5 of the act of March 4, 1915 (38 Stat. 1161), as amended by the act of March 21, 1918 (40 Stat. 458),'" grants relief to desert-land entrymen, as set forth in this section and § 232.58.

(b) This act applies to all pending desert-land entries made prior to July 1, 1925, under which the entryman or his duly qualified assignee under an assignment made prior to the date of this act has in good faith expended the sum of $3 per acre in the attempt to effect reclamation of the land and where there is no reasonable prospect that he would be able to secure water sufficient to effect reclamation of the irrigable land or any legal subdivision thereof.

(c) Desert-land entries made prior to March 4, 1915, and pending February 14, 1934, are entitled to the relief granted by the act of March 4, 1915, as amended, or by the provisions of this act. Desert-land entries made since March 4, 1915, and prior to July 1, 1925, and pending February 14, 1934, are entitled only to the relief provided for in this act.

(d) In all applications for relief of desert-land entries made prior to March 4, 1915, it should be specifically stated whether the relief is sought under the provisions of the act of March 4, 1915, or under the provisions of said act of February 14, 1934.

(e) The showing as to the right to such relief must be the same as that required by § 232.40. Applications for relief hereunder must be filed in the land office for the district in which the land embraced in the particular entry is situated.

(f) When any application for relief under the provisions of this act shall have been approved by the manager, notice, by registered mail, will be served upon the claimant, of such approval that he will be allowed 90 days from date of receipt of such notice within which to pay to the manager 25 cents an acre for the land embraced in the entry and to file an election to perfect title to the entry under the provisions of this act, and that if he fails within the time allowed to make said initial payment of 25 cents per acre, the entry will be canceled; that he will be allowed 1 year from the date of the filing of such election to pay the manager the additional amount of 75 cents an acre; and that, in case the final payment be not made within the time prescribed, the entry will be canceled and all money theretofore paid will be forfeited.

(g) Should any claimant fail to pay said 25 cents per acre and file said election within the 90-day period, the entry will be canceled and the case closed without further notice.

§ 232.58 *Publication and proof; final payment required.* (a) To perfect title to the entry, under the act of February 14, 1934, the claimant shall file with the manager a notice of intention to do so, and the manager will order the publication thereof in the same manner as to other desert-land cases and in the prescribed form.

(b) Publication, proof thereof and the required additional payment of 75 cents per acre should be made within 1 year from the date of the filing of the election mentioned in the preceding section, it being expressly stated in said act of February 14, 1934, that said additional payment of 75 cents per acre should be paid within 1 year from the date of the filing of the election to perfect title to the entry under said act, with the proviso "That in case the final payment be not made within the time prescribed, the entry shall be canceled and all money theretofore paid shall be forfeited." There is no provision of law whereby extension of time to make this payment may be granted.

(c) Where relief has heretofore been granted in desert-land entries made prior to March 4, 1915, and such entries are intact upon the records claimants may, if they so desire, take advantage of the provisions of this act.

(d) Where relief has been granted in desert-land entries under the original act of 1929 and prior to February 14, 1934, date of passage of act amendatory thereof, and such entries are intact upon the records of the Bureau of Land Management and all of the payments required to be made by said original act of 1929 have not been completed prior to the date of said amendatory act, in all such cases the total amount to be collected of such entrymen as a condition precedent to the patenting of their entries will be at the rate of $1 per acre, instead of $2.

PAYMENTS

§ 232.59 *Collection of purchase money and fees; issuance of final certificate.* (a) At the time of making final proof the claimant must pay to the manager the sum of $1 per acre for each acre of land upon which proof is made. This, together with the 25 cents per acre paid at the time of making the original entry, will amount to $1.25 per acre, which is the price to be paid for all lands entered under the desert land law, except where the entry is perfected by commutation or purchase under the act of March 4, 1915, as amended and supplemented. (See §§ 232.47 and 232.53.)

(b) If the entryman is dead and proof is made by anyone for the heirs, no will being suggested in the record, the final certificate should issue to the heirs generally, without naming them; if by anyone for the heirs or devisees, final certificate should issue in like manner to the heirs or devisees.

(c) When final proof is made on an entry made prior to the act of March 28, 1908 (35 Stat. 52; 43 U. S. C. 324, 326, 333), for unsurveyed land, if the land is still unsurveyed and such proof is satisfactory, the manager will approve same without collecting the final payment of $1 an acre and without issuing final certificate. Fees for reducing the final-proof testimony to writing should be collected and receipt issued therefor if the proof is taken before the manager. As soon as the plat or plats of any township or townships previously unsurveyed are filed in the land office the manager will examine his records for the purpose of determining, if possible, whether or not, prior to the passage of the act of March 28, 1908, any desert-land entry of unsurveyed land was allowed in the locality covered by the said plats; and if any such entries are found intact, he will call upon the claimants thereof to file a statement of adjustment, corroborated by two witnesses, giving the correct description, in accordance with the survey of the lands embraced in their respective entries.

(d) If the final proof has been made upon any desert-land entry so adjusted and the records show that such proof has been found satisfactory and no conflicts or other objections are apparent, the manager will allow claimant 60 days within which to make final payment for the land.

§ 232.60 *Amounts to be paid.* No fees or commissions are required of persons making entry under the desert land laws except such fees as are paid to the officers for taking the affidavits and proofs. Unless the entry be perfected under the act of March 4, 1915 (38 Stat. 1161; 43 U. S. C. 335, 337, 338), or February 14, 1934 (48 Stat. 349; 43 U. S. C. 339), the only payments made to the Government are the original payment of 25 cents an acre at the time of making the application and the final payment of $1 an acre, to be paid at the time of making final proof. Where final proofs are made before the manager in California, Oregon, Washington, Nevada, Colorado, Idaho, New Mexico, Arizona, Utah, Wyoming, and Montana, he will be entitled to receive jointly 22½ cents for each 100 words of testimony reduced to writing; in all other States he will be allowed 15 cents per 100 words for such service. The United States commissioners, judges, and clerks are not entitled to receive a greater sum than 25 cents for each oath administered by them, except that they are entitled to receive $1 for administering the oath to each entryman and each final-proof witness where final-proof testimony has been reduced to writing by them.

CONTESTS AND RELINQUISHMENTS

§ 232.61 *Contests.* (a) Contests may be initiated by any person seeking to acquire title to or claiming an interest in the land involved against a party to any desert-land entry because of priority of claim or for any sufficient cause affecting the legality or validity of the claim not shown by the records of the Bureau of Land Management.

(b) Successful contestants will be allowed a preference right of entry for 30 days after notice of the cancellation of the contested entry, in the same manner as in homestead cases, and the manager will give the same notice and is entitled to the same fee for notice as in other cases.

CROSS REFERENCE: For rules of practice governing contests and protests, see Part 221 of this chapter.

§ 232.62 *Relinquishments.* A desert-land entry may be relinquished at any time by the party owning the same. Conditional relinquishments will not be accepted.

CROSS REFERENCE: For relinquishments, in general, see Part 105 of this chapter.

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GENERAL LAND OFFICE

Circular 1991?

REGULATIONS CONCERNING THE SELECTION OF DESERT LANDS

BY CERTAIN STATES AND TERRITORIES

UNDER THE ACT OF CONGRESS APPROVED AUGUST 18, 1894
WITH AMENDMENTS

AND THE

MAKING OF FINAL PROOF FOR DESERT LANDS SEGREGATED THEREUNDER

See Circ. 1843 as Part 232 (43 CFR)

Approved April 9, 1909

WASHINGTON
GOVERNMENT PRINTING OFFICE
1909

REGULATIONS CONCERNING THE SELECTION OF DESERT LANDS BY CERTAIN STATES AND TERRITORIES.

STATUTES.

Section 4 of the act of August 18, 1894, entitled, "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1895, and for other purposes" (28 Stat., 372–422), authorizes the Secretary of the Interior, with the approval of the President, to contract and agree to patent to the States of Washington, Oregon, California, Nevada, Idaho, Montana, Wyoming, Colorado, North Dakota, South Dakota, and Utah, or any other States, as provided in the act, in which may be found desert lands, not to exceed 1,000,000 acres of such lands to each State, under certain conditions. The text of the act is as follows:

SEC. 4. That to aid the public-land States in the reclamation of the desert lands therein, and the settlement, cultivation, and sale thereof in small tracts to actual settlers, the Secretary of the Interior, with the approval of the President, be, and hereby is, authorized and empowered, upon proper application of the State, to contract and agree, from time to time, with each of the States in which there may be situated desert lands as defined by the act entitled "An act to provide for the sale of desert land in certain States and Territories," approved March third, eighteen hundred and seventy-seven, and the act amendatory thereof, approved March third, eighteen hundred and ninety-one, binding the United States to donate, grant, and patent to the State free of cost for survey or price such desert lands, not exceeding one million acres in each State, as the State may cause to be irrigated, reclaimed, occupied, and not less than twenty acres of each one hundred and sixty-acre tract cultivated by actual settlers, within ten years next after the passage of this act, as thoroughly as is required of citizens who may enter under the said desert-land law.

Before the application of any State is allowed or any contract or agreement is executed or any segregation of any of the land from the public domain is ordered by the Secretary of the Interior, the State shall file a map of the said land proposed to be irrigated, which shall exhibit a plan showing the mode of the contemplated irrigation and which plan shall be sufficient to thoroughly irrigate and reclaim said land and prepare it to raise ordinary agricultural crops and shall also show the source of the water to be used for irrigation and reclamation, and the Secretary of the Interior may make necessary regulations for the reservation of the lands applied for by the States to date from the date of the filing of the map and plan of irrigation, but such reservation shall be of no force whatever if such map and plan of irrigation shall not be approved. That any State contracting under this section is hereby authorized to make all necessary contracts to cause the said lands to be reclaimed, and to induce their settlement and cultivation in accordance with and subject to the provisions of this section; but the State shall not be authorized to lease any of said lands or to use

or dispose of the same in any way whatever, except to secure their reclamation, cultivation, and settlement.

As fast as any State may furnish satisfactory proof, according to such rules and regulations as may be prescribed by the Secretary of the Interior, that any of said lands are irrigated, reclaimed, and occupied by actual settlers, patents shall be issued to the State or its assigns for said lands so reclaimed and settled: *Provided*, That said States shall not sell or dispose of more than one hundred and sixty acres of said lands to any one person, and any surplus of money derived by any State from the sale of said lands in excess of the cost of their reclamation, shall be held as a trust fund for and be applied to the reclamation of other desert lands in such State. That to enable the Secretary of the Interior to examine any of the lands that may be selected under the provisions of this section, there is hereby appropriated out of any moneys in the Treasury not otherwise appropriated one thousand dollars.

In the act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1897, and for other purposes, approved June 11, 1896 (29 Stat., 413–434), there is, under the head of appropriation for "Surveying public lands," the following provision:

That under any law heretofore or hereafter enacted by any State providing for the reclamation of arid lands, in pursuance and acceptance of the terms of the grant made in section four of an act entitled "An act making appropriations for the sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five," approved August eighteenth, eighteen hundred and ninety-four, a lien or liens is hereby authorized to be created by the State to which such lands are granted and by no other authority whatever, and when created shall be valid on and against the separate legal subdivisions of land reclaimed, for the actual cost and necessary expenses of reclamation and reasonable interest thereon from the date of reclamation until disposed of to actual settlers; and when an ample supply of water is actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs, to reclaim a particular tract or tracts of such lands, then patents shall issue for the same to such State without regard to settlement or cultivation: *Provided*, That in no event, in no contingency, and under no circumstances shall the United States be in any manner directly or indirectly liable for any amount of any such lien or liability, in whole or in part.

The limitation of time in the above-quoted section 4 was modified by section 3 of the act entitled, "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1902, and for other purposes," approved March 3, 1901 (31 Stat., 1133–1188), which provides as follows:

Sec. 3. That section four of the act of August eighteenth, eighteen hundred and ninety-four, entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," is hereby amended so that the ten years' period within which any State shall cause the lands applied for under said act to be irrigated and reclaimed, as provided in said section as amended by the act of June eleventh, eighteen hundred and ninety-six, shall begin to run from the date of approval by the Secretary of the Interior of the State's application for the segregation of such lands; and if the State fails within said ten years to cause the whole or any part of the lands so segregated to be so irrigated and reclaimed, the Secretary of the Interior may, in his discretion, continue said segregation for a period of not exceeding five years, or may, in his discretion, restore such lands to the public domain.

By the act of March 1, 1907 (34 Stat., 1057), the provisions of the foregoing acts were extended to the desert lands within the former Southern Ute Indian Reservation in Colorado.

Said act is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of section four of "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," approved August eighteenth, eighteen hundred and ninety-four, and the acts amendatory thereof, approved June eleventh, eighteen hundred and ninety-six, and March third, nineteen hundred and one, respectively, be, and are hereby, extended over and shall apply to the desert lands included within the limits of the former Southern Ute Indian Reservation in Colorado not included in any forest reservation: *Provided,* That before a patent shall issue for any of the lands aforesaid under the terms of the said act approved August eighteenth, eighteen hundred and ninety-four, and amendments thereto, the State of Colorado shall pay into the Treasury of the United States the sum of one dollar and twenty-five cents per acre for the lands so patented, and the money so paid shall be subject to the provisions of section three of the act of June fifteenth, eighteen hundred and eighty, entitled "An act to accept and ratify the agreements submitted by the confederated bands of Ute Indians in Colorado for the sale of their reservation in said State, and for other purposes, and to make the necessary appropriation for carrying out same."

SEC. 2. That no lands shall be included in any tract to be segregated under the provisions of this act on which the United States Government has valuable improvements or which have been reserved for Indian schools or farm purposes.

In the act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1909, and for other purposes, approved May 27, 1908 (35 Stat., 317–347), there is under the head of "Arid lands in Idaho and Wyoming," the following provision:

That an additional one million acres of arid lands within each of the States of Idaho and Wyoming be made available and subject to the terms of section four of an act of Congress entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," approved August eighteenth, eighteen hundred and ninety-four, and by amendments thereto, and that the States of Idaho and Wyoming be allowed under the provisions of said acts said additional area or so much thereof as may be necessary for the purposes and under the provisions of said acts.

The act of February 18, 1909 (Public, No. 244), extending the provisions of section 4, act of August 18, 1894, supra, and the amendments thereof, to the Territories of New Mexico and Arizona, reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the provisions of section four of the act of Congress approved August eighteenth, eighteen hundred and ninety-four, being chapter three hundred and one to Supplement to Revised Statutes of the United States, entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," and the amendments thereto be, and the same are hereby, extended to

the Territories of New Mexico and Arizona, and that said Territories upon complying with the provisions of said act shall be entitled to have and receive all of the benefits therein conferred upon the States.

SEC. 2. That this act shall be in full force and effect from and after its passage.

The provisions of said section 4, act of August 18, 1894, and the amendments thereof, were also extended to the desert lands within the former Ute Indian Reservation in Colorado, by the act of February 24, 1909 (Public, No. 255). The text of which is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provision of section four of "An act making appropriation for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," approved August eighteenth, eighteen hundred and ninety-four, and the amendments thereof, approved June eleventh, eighteen hundred and ninety-six, and March third, nineteen hundred and one, respectively, be, and are hereby, extended over and shall apply to the desert lands within the limits of all that portion of the former Ute Indian Reservation, not included in any national forest, in the State of Colorado, described and embraced in the act entitled "An act relating to lands in Colorado lately occupied by the Uncompahgre and White River Ute Indians," approved July twenty-eighth, eighteen hundred and eighty-two: *Provided*, That before a patent shall issue for any of the lands aforesaid under the terms of the act approved August eighteenth, eighteen hundred and ninety-four, and amendments thereto, the State of Colorado shall pay into the Treasury of the United States the sum of one dollar and twenty-five cents per acre for the lands so patented, and the money so paid shall be subject to the provisions of section three of the act of June fifteenth, eighteen hundred and eighty, entitled, "An act to accept and ratify the agreements submitted by the confederated bands of Ute Indians in Colorado for the sale of their reservation in said State, and for other purposes, and to make the necessary appropriation for carrying out same."

SEC. 2. That no lands shall be included in any tract to be segregated under the provisions of this act on which the United States Government has valuable improvements, or which have been reserved for any Indian schools or farm purposes.

REGULATIONS.

1. Under the provisions of the acts quoted the States and Territories are allowed ten years from the date of the approval of the application for the segregation of the land by the Secretary of the Interior, in which to irrigate and reclaim them. The Secretary of the Interior may, however, in his discretion, extend the time for irrigating and reclaiming the lands for a period of five years, or he may restore to the public domain the lands not reclaimed at the expiration of the ten years, or of the extended period.

2. The lands selected under these acts must all be desert lands as defined by the acts of 1877 and 1891, and the decisions and regulations of this department therein provided for.

Lands which produce native grasses sufficient in quantity, if unfed by grazing animals, to make an ordinary crop of hay in usual seasons, are not desert lands. Lands which will produce an agricultural crop of any kind in amount sufficient to make the cultivation reasonably

remunerative are not desert. Lands containing sufficient moisture to produce a natural growth of trees are not to be classed as desert lands.

Lands occupied by bona fide settlers and lands containing valuable deposits of coal or other minerals are not subject to selection.

3. The second paragraph of section 4, before quoted, provides that before the application of any State is allowed or any contract or agreement is executed or any segretion of any of the land from the public domain is ordered by the Secretary of the Interior, the State shall file a map of the land selected and proposed to be irrigated, which shall exhibit a plan showing the mode of contemplated irrigation and the source of the water. In accordance with the requirements of the act, the State must give full data to show that the proposed plan will be sufficient to thoroughly irrigate and reclaim the land and prepare it to raise ordinary agricultural crops; for which purpose a statement by the state engineer of the amount of water available for the plan of irrigation will be necessary. The other data required can not be fully prescribed, as it will depend upon the nature of the plan submitted. All information necessary to enable this office to judge of its practicability for irrigating all the land selected must be submitted. Upon the filing of the map showing the plan of irrigation, and the lands selected, such lands will be withheld from other disposition until final action is had thereon by the Secretary of the Interior. If such final action be a disapproval of the map and plan, the lands selected shall, without further order, be subject to disposition as if such reservation had never been made; and the local officers will make the appropriate notations on the tract books and plat books, opposite those previously made, in accordance with the requirements of paragraph 7.

4. The map must be on tracing linen, in duplicate, and must be drawn to a scale not greater than 1,000 feet to 1 inch. A smaller scale is desirable, if the necessary information can be clearly shown. The map and field notes in duplicate must be filed in the local land office for the district in which the land is located. If the lands selected are located in more than one district, duplicate map and field notes need be filed in but one district and single sets in the others. Each legal subdivision of the land selected should be clearly indicated on the map by a check mark, thus: ✓. The map and field notes must show the connections of termini of a canal or of the initial point of a reservoir with public survey corners, the connections with public survey corners wherever section or township lines are crossed by the proposed irrigation works, and must show full data to admit of retracing the lines of the survey of the irrigation works on the ground.

5. The map should bear an affidavit of the engineer who made or supervised the preparation of the map and plan, Form 1, page 11,

and also of the officer authorized by the State to make its selections under the act, Form 2, page 11. The map should be accompanied by a list in triplicate of the lands selected, designated by legal subdivisions, properly summed up at the foot of each page, and at the end of the list. If the lands selected are located in more than one district, a list in triplicate must be filed in each office, describing the lands selected in that district. *Clear* carbon copies are preferred for the duplicate and triplicate lists. The lists should be dated and verified by a certificate of the selecting agent, Form 3, page 12. The party appearing as agent of the State must file with the register and receiver written and satisfactory evidence, under seal, of his authority to act in the premises; such evidence once filed need not be duplicated during the period for which the agent was appointed. The State should number the lists in consecutive order, beginning with No. 1, regardless of the land office in which they are to be filed. Form of title page to be prefixed to the lists of selections will be found on page 12, marked "A." Lists received at this office containing erasures will not be filed, but will be returned in order that new ones may be prepared. When a township has not been subdivided, but has had its exteriors surveyed, the whole township may be designated, omitting, however, the sections to which the State may be entitled under its grant of school lands. When the records are in such condition that the proper notations may be made, a section or part of a section of unsurveyed land may be designated in the list; but no patent can issue thereon until the land has been surveyed.

6. A contract in the form herein prescribed (Form 5, p. 13), in duplicate, signed by the state officer authorized to execute such contract, must also be filed. A carbon copy of the contract *will not be accepted.*[a] The person who executes the contract on behalf of the State must furnish evidence of his authority to do so.

7. The lists must be carefully and critically examined by the register and receiver, and their accuracy tested by the plats and records of their office. When so examined and found correct in all respects, they will attach a certificate at the foot of each list (Form 4, page 12). The register must note on the map, lists, contracts, and all papers the name of the land office and the date of filing over his written signature and will thereupon post the selections in ink in the tract book after the following manner: "Selected ———, 19—, by ——— ———, the State ———, as desert land, act of August 18, 1894, serial No. ——," and on the plats he will mark the tracts so selected "State desert land selection." After the selections are properly posted and

[a] Printed copies of the contract, in which the list of lands can be inserted, will be furnished to the State, or to parties dealing with it, on application to the General Land Office.

marked on the records, the lists, maps, and all papers will be transmitted to the General Land Office.

For rejected selections a new list will be required, upon which the register will note opposite each tract the objections appearing on the records and indorse thereon his reasons in full for refusing to certify the same. The State will be allowed to appeal in the manner provided for in the Rules of Practice. It is required that clear lists of approvals shall in every case be made out by the selecting agents, if after the above examination one or more tracts have been rejected, showing clearly and without erasure the tracts to which the register is prepared to certify. On the map of lands selected the register will mark *rejected* such tracts as he has rejected on the lists.

8. When the canals or reservoirs required by the plan of irrigation cross public land not selected by the State, an application for right of way over such lands under sections 18 to 21, act of March 3, 1891 (26 Stat., 1085), should be filed separately, in accordance with the regulations under said act.

9. In the preceding paragraphs instructions are given for the designation of the lands by the proper state authorities. Upon the approval of the map of the lands and the plan of irrigation, the contract is executed by the Secretary of the Interior and approved by the President, as directed by the act. Upon the approval of the map and plan, the lands are reserved for the purposes of the act, said reservation dating from the date of the filing of the map and plan in the local land office. A duplicate of the approved map and plan, and of the list of lands, is transmitted for the files of the local land office, and a triplicate copy of the list is forwarded to the state authorities.

10. When patents are desired for any lands that have been segregated, the State should file in the local land office a list, to which is prefixed a certificate of the presiding officer of the state land board, or other officer of the State who may be charged with the duty of disposing of the lands which the State may obtain under the law (Form 6, page 14); and followed by an affidavit of the state engineer, or other state officer whose duty it may be to superintend the reclamation of the lands (Form 7, page 15).

11. The certificate of Form 6 is required in order to show that the state laws accepting the grant of the lands have been duly complied with.

12. The affidavit of Form 7 is required in order to show compliance with the provisions of the law, that an ample supply of water has been actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs, for each tract in the list, sufficient to thoroughly irrigate and reclaim it, and to prepare it to raise ordinary agricultural crops. A separate statement by the state engineer must be furnished, giv-

ing all the facts as to the water supply and the nature, location, and completion of the irrigation works.

If there are some high points which it is not practicable to irrigate, the nature, extent, location, and area of such points should be fully stated. If no part of a legal subdivision is susceptible of irrigation, such legal subdivision must be relinquished. Lands upon which valuable deposits of coal or other minerals are discovered will not be patented to the State under these acts.

13. These lists will be called "lists for patent," and should be numbered by the State consecutively, beginning with No. 1. The list should also show, opposite each tract, the number of the approved segregation list in which it appears. The aggregate area should be stated at the foot of each page and at the end of the list.

14. Upon the filing of such list the local officers will place thereon the date of filing and note on the records opposite each tract listed: "List for patent serial No. ———, filed —— ——," giving the date.

15. When said list is filed in the local land office there shall also be filed by the State a notice, in duplicate, prepared for the signature of the register and receiver, describing the land by sections, and portions of sections, where less than a section is designated (Form 8, p. 15). This notice shall be published at the expense of the State once a week in each of nine consecutive weeks, in a newspaper of established character and general circulation, to be designated by the register as published nearest the land. One copy of said notice shall be posted in a conspicuous place in the local office for at least sixty days during the period of publication.

16. At the expiration of the period of publication the State shall file in the local office proof of said publication and of payment for the same. Thereupon the register and receiver shall forward the list for patent to the General Land Office, noting thereon any protests or contests which may have been filed, transmitting such papers, and submitting any recommendations they may deem proper. They will also forward proofs of publication, of payment therefor, and of the posting of the list in their office.

17. Before patents are issued for lands within the former Southern Ute and the Ute Indian Reservations in Colorado, the State will be required to pay the price ($1.25 per acre) fixed by the acts of March 1, 1907 and February 24, 1909. The State will be advised of the number of acres which will be included in the patent and payment shall be made to the receiver of the proper land office, who will issue a receipt as in other cases. The money will be accounted for in the same manner as other moneys received from the disposal of such lands.

18. Upon the receipt of the papers in the General Land Office such action will be taken in each case as the showing may require, and all

tracts that are free from valid protest or contest, and respecting which the law and regulations have been complied with, will be certified to the Secretary of the Interior for approval and patenting.

FRED DENNETT,
Commissioner, General Land Office.

Approved April 9, 1909.
R. A. BALLINGER,
Secretary of the Interior.

FORM 1.

STATE OF ———,
County of ———, *ss:*

——— ———, being duly sworn, says he is the engineer under whose supervision the survey and plan hereon were made (or is the person employed to make, etc.); that the tracts shown hereon to be selected are each and every one desert land as contemplated by the act of Congress approved August 18, 1894 (28 Stat., 372–422), the act of June 11, 1896 (29 Stat., 434); and the act of March 3, 1901 (31 Stat., 1133–1188); [a] that he is well acquainted with the character of the land herein applied for, having personally examined same; that there is not to his knowledge within the limits thereof any vein or lode or quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, nor any deposit of coal, placer, cement, gravel, salt spring, or deposit of salt, nor other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that the land is not occupied by any settler; that the plan of irrigation herewith submitted is accurately and fully represented in accordance with ascertained facts; that the system proposed is sufficient to thoroughly irrigate and reclaim said land and prepare it to raise ordinary crops; and that the survey of said system of irrigation is accurately represented upon this map and the accompanying field notes.

——— ———,
——— ———.

Subscribed and sworn to before me this —— day of ———, 19—.
[SEAL.]

——— ———,
Notary Public.

FORM 2.

STATE OF ———,
County of ———, *ss:*

——— ———, being duly sworn, says that he is the ——— (designation of office) authorized by the State of ——— to make desert-land selections under the act of Congress approved August 18, 1894 (28 Stat., 372–422), the act of June 11, 1896 (29 Stat., 434), and the act of March 3, 1901 (31 Stat., 1133–1188); [a] that the plan of irri-

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[a] The States of Idaho and Wyoming must insert here a reference to the act of May 27, 1908 (35 Stat., 317–347).

The State of Colorado must insert here a reference to the act of March 1, 1907 (34 Stat., 1057), when the lands are within the former Southern Ute Indian Reservation, and to the act of February 24, 1909 (Public No. 255), when the lands are within the former Ute Indian Reservation.

gation and survey herewith is submitted under authority of the State of ——; and that the tracts shown hereon to be selected are each and every one desert land, as contemplated by the said acts of Congress, none being of the classes designated as timber or mineral lands.

——— ———,
——— ———.

Subscribed and sworn to before me this —— day of ———, 19—.
[SEAL.] ——— ———,
Notary Public.

A.

STATE OF ———,
UNITED STATES LAND OFFICE,
——— ———, 19—.

——— ———, the duly authorized agent of the State of ———, under and by virtue of an act of Congress approved August 18, 1894 (28 Stat., 372–422), the act of June 11, 1896 (29 Stat., 434), and the act of March 3, 1901 (31 Stat., 1133–1188),[a] and in pursuance of the rules and regulations prescribed by the Secretary of the Interior, hereby makes and files the following list of desert public lands which the State is authorized to select under the provisions of the said acts of Congress:

FORM 3.

STATE OF ———,
County of ———, *ss:*

I, ——— ———, being duly sworn depose and say that I am ——— (designation of office) authorized by the State of ——— to make desert-land selections under the act of Congress approved August 18, 1894 (28 Stat., 372–422), the act of June 11, 1896 (29 Stat., 434), and the act of March 3, 1901 (31 Stat., 1133–1188);[a] that the foregoing list of lands which I hereby select is a correct list of lands selected under said acts; that the lands are vacant, unappropriated, are not interdicted timber nor mineral lands, and are desert lands as contemplated by the said acts of Congress.

——— ———.

Subscribed and sworn to before me this —— day of ———, 19—.
[SEAL.] ——— ———,
Notary Public.

FORM 4.

UNITED STATES LAND OFFICE,
——— ———,
——— ——, 19—.

We hereby certify that we have carefully and critically examined the foregoing list of lands selected ——— ——, 19—, by ——— ———, the duly authorized agent of the State of ———, under the provisions of the act of Congress approved August 18, 1894 (28 Stat., 372–422), the act of June 11, 1896 (29 Stat., 434), and the act of March 3, 1901 (31 Stat., 1133–1188);[a] that we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct. And we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and that the same are not nor is any part thereof returned and denominated as mineral or timber lands; nor is there any homestead or other valid claim to any portion of said lands on file or of

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[a] See footnotes under Forms 1 and 2.

record in this office; and that the said lands are, to the best of our knowledge and belief, desert lands, as contemplated by the said acts of Congress; and that the fees, amounting to $———, have been paid upon the said area of ——— acres.

——— ———, *Register.*
——— ———, *Receiver.*

FORM 5.

These articles of agreement, made and entered into this ——[a] day of ———,[a] A. D. 19—,[a] by and between ——— ———,[a] Secretary of the Interior, for and on behalf of the United States of America, party of the first part, and ——— ———, for and on behalf of the State of ———, party of the second part, witnesseth:

That in consideration of the stipulations and agreements hereinafter made, and of the fact that said State has, under the provisions of section 4 of the act of Congress approved August 18, 1894, of the act of Congress approved June 11, 1896, and of the act of Congress approved March 3, 1901,[b] through ——— ———, its proper officer, thereunto duly authorized, presented its proper application for certain lands situated within said State and alleged to be desert in character and particularly described as follows, to wit: List No. — (here insert list of lands and total area), and has filed a map of said lands and exhibited a plan showing the mode by which it is proposed that said lands shall be irrigated and reclaimed and the source of the water to be used for that purpose, the said party of the first part contracts and agrees, and, by and with the consent and approval of ——— ———,[a] President thereof, hereby binds the United States of America to donate, grant, and patent to said State, or to its assigns, free from cost for survey or price,[c] any particular tract or tracts of said lands, whenever an ample supply of water is actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs, to reclaim the same, in accordance with the provisions of said acts of Congress, and with the regulations issued thereunder, and with the terms of this contract, at any time within ten years from the date of the approval of the said map of the lands.

It is further understood that said State shall not lease any of said lands or use or dispose of the same in any way whatever, except to secure their reclamation, cultivation, and settlement; and that in selling and disposing of them for that purpose the said State may sell or dispose of not more than 160 acres to any one person, and then only to bona fide settlers who are citizens of the United States or who have declared their intention to become such citizens; and it is distinctly understood and fully agreed that all persons acquiring title to said lands from said State prior to the issuance of patent, as hereinafter mentioned, will take the same subject to all the requirements of said acts of Congress and to the terms of this contract, and shall show full compliance therewith before they shall have any claim against the United States for a patent to said lands.

It is further understood and agreed that said State shall have full power, right, and authority to enact such laws, and from time to time to make and enter into such contracts and agreements, and to create and assume such obligations in relation to and concerning said lands as may be necessary to induce and cause such irrigation and reclamation thereof as is required by this contract and the said acts of Congress; but no such law, contract, or obligation shall in any way bind or obligate the United States to do or perform any act not clearly directed and set forth in this contract and

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[a] These blanks should be left vacant by the state agent.

[b] See footnotes under Forms 1 and 2.

[c] The words "or price" must be eliminated before the contract is signed on behalf of the State of Colorado when the lands involved are within the former Southern Ute or Ute Indian reservations.

said acts of Congress, and then only after the requirements of said acts and contract have been fully complied with.

Neither the approval of said application, map, and plan, nor the segregation of said land by the Secretary of the Interior, nor anything in this contract, or in the said acts of Congress, shall be so construed as to give said State any interest whatever in any lands upon which, at the date of the filing of the map and plan hereinbefore referred to, there may be an actual settlement by a bona fide settler, qualified under the public land laws to acquire title thereto, or which are known to be valuable for their deposits of coal or other minerals.

It is further understood and agreed that as soon as an ample supply of water is actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs, to reclaim a particular tract or tracts of said lands the said State or its assigns may make proof thereof under and according to such rules and regulations as may be prescribed therefor by the Secretary of the Interior, and as soon as such proof shall have been examined and found to be satisfactory patents shall issue to said State, or to its assigns, for the tracts included in said proof.

The said State shall, out of the money arising from its disposal of said lands, first reimburse itself for any and all costs and expenditures incurred by it in irrigating and reclaiming said lands, or in assisting its assigns in so doing; and any surplus then remaining after the payment of the cost of such reclamation shall be held as a trust fund, to be applied to the reclamation of other desert lands within said State.

This contract is executed in duplicate, one copy of which shall be placed of record and remain on file with the Commissioner of the General Land Office, and the other shall be placed of record and remain on file with the proper officer of said State, and it shall be the duty of said State to cause a copy thereof, together with a copy of all rules and regulations issued thereunder or under said acts of Congress, to be spread upon the deed records of each of the counties in said State in which any of said lands shall be situated.

In testimony whereof the said parties have hereunto set their hands the day and year first herein written.

——— ———,
Secretary of the Interior.
State of ———.
By ——— ———.

APPROVAL.

To all to whom these presents shall come, greeting:

Know ye, that I, ——— ———,[a] President of the United States of America, do hereby approve and ratify the attached contract and agreement, made and entered into on the ——[a] day of ———,[a] 19—,[a] by and between ——— ———,[a] Secretary of the Interior, for and on behalf of the United States, and ——— ———, for and on behalf of the State of ———, under section 4 of the act of Congress approved August 18, 1894, the act approved June 11, 1896, and the act approved March 3, 1901.[b]

——— ———.

FORMS FOR VERIFICATION AND PUBLICATION OF LISTS FOR PATENT.

FORM 6.

I, ——— ———, do hereby certify that I am the ——— ———, (designation of office) of the State of ——— ———; that I am charged with the duty of disposing of the lands granted to the State in pursuance of section 4, act of August 18, 1894 (28 Stat., 372–422), the act of June 11, 1896 (29 Stat., 434), and the act of March 3, 1901

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[a] These blanks should be left vacant by the state agent.

[b] See footnotes under Forms 1 and 2.

(31 Stat., 1133–1188);[a] and that the laws of the said State relating to the said grant from the United States have been complied with in all respects as to the following list of lands, which is hereby submitted on behalf of the said State for the issuance of patent under said acts of Congress.

——— ———,
——— ———.

[Here add list of lands.]

FORM 7.

To follow list of lands.

STATE OF ———,
County of ———, *ss:*

——— ———, being duly sworn, deposes and says that he is the ——— ——— (designation of office) of the State of ———, charged with the duty of supervising the reclamation of lands segregated under section 4, act of August 18, 1894 (28 Stat., 372–422), the act of June 11, 1896 (29 Stat., 434), and the act of March 3, 1901 (31 Stat., 1133–1188),[a] that he has examined the lands designated on the foregoing list, and that an ample supply of water has been actually furnished (in a substantial ditch or canal, or by artesian wells or reservoirs) for each tract in said list, sufficient to thoroughly irrigate and reclaim it, and to prepare it to raise ordinary agricultural crops.

——— ———,
——— ———.

Subscribed and sworn to before me this —— day of ———, 19—.
[SEAL.]

———,
Notary Public.

FORM 8.

Form for published notice.

UNITED STATES LAND OFFICE,
———, ———, 19—.

To whom it may concern:

Notice is hereby given that the State of ——— has filed in this office the following list of lands, to wit, ———, and has applied for a patent for said lands under the acts of August 18, 1894 (28 Stat., 372–422), June 11, 1896 (29 Stat., 434), and March 3, 1901 (31 Stat., 1133–1188),[a] relating to the granting of not to exceed a million acres[b] of arid land to each of certain States; and that the said list, with its accompanying proofs, is open for the inspection of all persons interested, and the public generally.

Within the next sixty days following the date of this notice, protests or contests against the claim of the State to any tract described in the list, on the ground of failure to comply with the law, on the ground of the nondesert character of the land, on the ground of a prior adverse right, or on the ground that the same is more valuable for mineral than for agricultural purposes, will be received and noted for report to the General Land Office at Washington, D. C.

——— ———, *Register.*
——— ———, *Receiver.*

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[a] See footnotes under Forms 1 and 2.
[b] In the cases of Idaho and Wyoming 2,000,000 acres.

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1992]

PART 254—SALE, GRANT, OR LEASE OF PUBLIC LANDS FOR RECREATION AND PUBLIC PURPOSES

PUBLICATIONS, PROTESTS, PATENTS, TRANSFERS

Paragraph (c) of § 254.10 is amended to read as follows:

§ 254.10 *Publications; protests; patents; transfers.* * * *

(c) All patents under this act will contain a clause providing that if the patentee or its successor attempts to transfer title to or control over the lands to another or the lands are devoted to a use other than that for which the lands were conveyed, without consent of competent authority, or prohibits or restricts, directly or indirectly, or permits its agents, employees, contractors, or subcontractors (including without limitation, lessees, sublessees and permitees), to prohibit or restrict, directly or indirectly, the use of any part of the patented lands or any of the facilities thereon by any person because of such person's race, creed, color, or national origin, title shall revert to the United States. This clause will terminate 25 years after issuance of the patent. Transferees must meet all the qualifications of applicants under the act and will be subject to the terms and conditions of the regulations of this part.

This amendment shall take effect upon publication in the FEDERAL REGISTER.

FRED A. SEATON,
Secretary of the Interior.

JANUARY 28, 1958.

[F. R. Doc. 58-804; Filed, Feb. 3, 1958; 8:45 a. m.]

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1993]

PART 185—GENERAL MINING REGULATIONS

SUBPART H—DISPOSAL OF MINERALS RESERVED BY THE ACT OF JULY 17, 1914 (38 STAT. 509)

AUTHORITY: §§ 185.160 to 185.163 issued under R. S. 2478; 43 U. S. C. 1201. Interpret or apply sec. 2, 38 Stat. 509, as amended; 30 U. S. C. 1220.

§ 185.160 *Purpose.* The act of July 20, 1956 (70 Stat. 592), which amended the act of July 17, 1914 (38 Stat. 509; 30 U. S. C. sec. 122) was enacted to permit the disposal of certain reserved mineral deposits under the mining laws of the United States.

§ 185.161 *Minerals reserved by the act of July 17, 1914 subject to mineral location, entry and patenting.* The act of July 17, 1914 (38 Stat. 509; 30 U. S. C. sec. 122), as amended by the act of July 20, 1956 (70 Stat. 592), provides in part as follows:

* * * such deposits to be subject to disposal by the United States only as shall be hereafter expressly directed by law: *Provided, however,* That all mineral deposits heretofore or hereafter reserved to the United States under this Act which are subject, at the time of application for patent to valid and subsisting rights acquired by discovery and location under the mining laws of the United States made prior to the date of the Mineral Leasing Act of February 25, 1920 (41 Stat. 437), shall hereafter be subject to disposal to the holders of those valid and subsisting rights by patent under the mining laws of the United States in force at the time of such disposal. Any person qualified to acquire the reserved deposits may enter upon said lands with a view of prospecting for the same upon the approval of the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting, the measure of any such damage to be fixed by agreement of parties or by a court of competent jurisdiction. Any person who has acquired from the United States the title to or the right to mine and remove the reserved deposits, should the United States dispose of the mineral deposits in lands, may re-enter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the minerals therefrom; and mine and remove such minerals, upon payment of damages caused thereby to the owner of the land, or upon giving a good and sufficient bond or undertaking therefor in an action instituted in any competent court to ascertain and fix said damages:

§ 185.162 *Mineral subject to disposition.* The act of 1956 applies only to:

(a) Any mineral discovered and located under the United States mining laws prior to February 25, 1920, and reserved to the United States under the act of July 17, 1914 (38 Stat. 509; 30 U. S. C. 122) in the patent for the land and held under a valid mining location subsisting on the date that the patent application for the mining claim was filed. "Oil" reserved under the act of 1914 has been held to include oil shale. See 52 L. D. 329.

(b) Any of the other minerals within the boundaries of the mining claim reserved to the United States under the act of 1914 in the patent for the land but excepting such of those minerals as may be covered by a mineral lease or permit until such time as the rights either under the lease or permit are extinguished or terminated.

§ 185.163 *Provisions of the mineral patent.* (a) Each patent issued under the act of July 20, 1956, shall name discovered reserved mineral as well as the other minerals reserved to the United States and shall recite that in accordance with the reservation in the land patent, the mineral patentee, and its successors (or his heirs and assigns, if a person), shall have the right to prospect for, mine and remove the mineral or minerals for which the patent is issued.

(b) If, when the mineral entry is approved for patenting, there is a subsisting mineral lease or permit for any of the reserved minerals, the mineral patent shall identify the lease or permit and shall expressly except and exclude from the mineral conveyed by the patent, the mineral covered by the lease or permit, but shall provide that the exception and exclusion shall be effective only so long as any rights under either the lease or permit shall exist.

HATFIELD CHILSON,
Acting Secretary of the Interior.

FEBRUARY 6, 1958.

[F. R. Doc. 58-1119; Filed, Feb. 12, 1958; 8:46 a. m.]

Published in 23 F. R. February 13, 1958

INT.-DUP. SEC., WASH., D.C. 31592

Circular Distribution List

GPO 921657

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

[Circular 1994]

Replaced by 2020

PART 76—SCHOOL LAND RESERVATION, GRANTS FOR EDUCATIONAL AND INSTITUTIONAL PURPOSES

GRANT TO ALASKA FOR MENTAL HEALTH PROGRAM

AUTHORITY: §§ 76.7 to 76.13 issued under R. S. 2478; 43 U. S. C. 1201. Interpret or apply 70 Stat. 709, 711, 712; 48 U. S. C. 46-1, 46-2, 46 note.

GRANT TO ALASKA FOR MENTAL HEALTH PROGRAM

§ 76.7 *Statutory authority.* (a) The act of July 28, 1956 (70 Stat. 709, 711, 712), referred to in §§ 76.7 to 76.13 as "the act", grants to the Territory of Alaska the right to select, within 10 years from July 28, 1956, not to exceed one million acres from the public lands in Alaska which are vacant, unappropriated and unreserved at the time of selection.

(b) The act further provides, that, upon the revocation of any order of withdrawal in Alaska, the order of revocation shall provide for a period of not less than 90 days before the date on which it otherwise becomes effective during which period the Territory of Alaska shall have a preferred right of selection under the act, subject to prior existing valid rights, to equitable claims subject to allowance and confirmation, and to other preferred rights of application conferred by law other than the preferred right of application created by section 4 of the act of September 27, 1944 (58 Stat. 749; 43 U. S. C. 282), as amended.

§ 76.8 *Waiver of Territorial preference right of selection.* Where the proper selecting agent of the Territory files in writing in the appropriate land office a waiver of the preference provisions of paragraph (b) of § 76.7 in connection with the proposed revocation of an order of withdrawal, the order effecting such revocation will not provide for such preference.

§ 76.9 *Lands subject to selection; patents; minerals.* (a) Under the act, the Territory may select any vacant, unappropriated, and unreserved public lands in Alaska, whether or not they are surveyed and whether or not they contain mineral deposits. Where the preference provisions of paragraph (b) of § 76.7 do not apply, selections by the Territory of lands covered by an application filed prior to the Territorial selection will be rejected when and if such application is allowed. Conflicting offers for oil and gas leases filed pursuant to Part 192 of this chapter, whether filed prior to, simultaneously with, or after the filing of a selection under this part will be rejected when and if the selection is approved by the authorized officer of the Bureau of Land Management for survey, if applicable, and patenting.

(b) Patents will be issued for all selections approved under the act by the authorized officer of the Bureau of Land Management but such patents will not issue unless or until the lands are officially surveyed.

(c) Patents issued under the act will convey to the Territory all mineral deposits in the selected lands except that mineral deposits in lands which were on January 1, 1956, subject to Public Land Order No. 82 of January 22, 1943, will be reserved to the United States. Any minerals subject to the leasing laws and reserved to the United States in lands patented under the act may be disposed of to any qualified person under applicable laws and regulations. Until rules and regulations are issued, other minerals reserved to the United States are not subject to disposition, or, except by an authorized Federal agency, to prospecting.

§ 76.10 *Selections.* (a) Selections of lands under the act will be made by the proper selecting agent of the Territory and will be filed, in triplicate, in the land office of the district in which such selected lands are situated. No special form is required but it must be typewritten and must contain the following information:

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(1) A reference to the act of July 28, 1956 (70 Stat. 709).

(2) A certificate by the selecting agent showing

(i) That the selection is made under and pursuant to the laws of the Territory.

(ii) That the selection, together with other selections under the act pending or approved, does not exceed one million acres.

(iii) His official title and his authority to make the selection on behalf of the Territory.

(iv) That no portion of the selected land is occupied for any purpose by the United States and that the land is unoccupied, unimproved, and unappropriated by any person claiming the land other than the applicant.

(v) That the selected land does not extend more than 160 rods along the shore of any navigable water or that such restriction has been waived or should be waived (see § 77.4 (b) of this chapter).

(vi) All the facts relative to medicinal or hot springs or other waters upon the selected lands.

(vii) The date on which the lands were posted in accordance with § 76.11.

(3) If the selected lands are surveyed, the legal description of the lands in accordance with the official plats of survey.

(4) If the selected lands are unsurveyed, a description of the lands and a map or maps, in triplicate, sufficient to permit ready identification of the location, boundaries, and area of the lands.

(b) Selections must be accompanied by a filing fee of $10 for each 1,000 acres or fraction thereof in the selection which fee is not returnable.

(c) All selections shall be made in reasonably compact tracts, taking into account the situation and potential uses of the lands involved. A tract will not be considered compact if it adjoins other public lands available for selection which the authorized officer of the Bureau of Land Management considers a part of such tract, taking into account the situation and potential uses of all the lands involved. Not more than 6,400 acres will be included in any one selection except where the lands selected consist of one compact tract in excess of 6,400 acres.

§ 76.11 *Segregative effect of applications; effect of approvals.* (a) Lands desired by the Territory under the act will be segregated from all appropriations based upon settlement and location, including locations under the mining laws, when the Territory adequately posts the lands with notices showing the date of said posting and that it has selected the lands or intends to select them within 60 days of the date of posting such notices. Such segregation will automatically terminate if the Territory fails to make selection of the lands within 60 days of posting notice of intention to select. Otherwise it will continue until final action is taken on the selection. The Territory will be expected to remove such notices from public lands promptly upon termination of the segregation period. Lands desired by the Territory under the act will be segregated from all appropriations based upon applications upon filing of its selection in the appropriate land office.

(b) Following the selection of lands by the Territory pursuant to the requirements of § 76.10, the Territory shall be authorized to lease and make conditional sales of such selected lands pending survey of the lands, if necessary, and issuance of patent.

§ 76.12 *Publication and protests.* (a) The Territory will be required to publish once a week for five consecutive weeks in accordance with § 106.14 of this chapter, at its own expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file in the appropriate office their objections to the issuance of patent for lands selected under the act. A protestant must serve on the Territory a copy of the objections and furnish evidence of service to the appropriate land office.

(b) The Territory must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

§ 76.13 *Appeals.* An appeal pursuant to the Rules of Practice, Part 221 of this chapter, may be taken from the decision of the authorized officer of the Bureau of Land Management.

HATFIELD CHILSON,
Acting Secretary of the Interior.

FEBRUARY 11, 1958.

[F. R. Doc. 58-1229; Filed, Feb. 17, 1958; 8:46 a. m.]

INT.-DUP. SEC., WASH., D.C. 31708

TITLE 43--PUBLIC LANDS: INTERIOR

Chapter 1--Bureau of Land Management, Department of the Interior

Subchapter L—Mineral Lands

[Circular No. 1995]

PART 193—COAL LEASES, PERMITS AND LICENSES

APPLICATION FOR LEASE

Paragraph (a) (2) of § 193.11 is amended to read as follows:

§ 193.11 *Application for lease.* (a) * * *

(2) Proof of citizenship: If applicant is an individual, a statement as to whether native born or naturalized; if an association (including a partnership), it must submit a certified copy of the articles of association and a statement by its members as to their citizenship and holdings. If the applicant is a corporation, it must submit statements showing (i) the State or Territory in which it is incorporated; (ii) that it is authorized to hold leases and permits for coal deposits, and the names of the officers authorized to act in such matters in behalf of the corporation; (iii) the percentage of the corporate voting stock and of all the stock owned by aliens or those having addresses outside of the United States; and (iv) the name, address, citizenship and acreage holdings of any stockholder owning or controlling 20 percent or more of the corporate stock of any class. If more than 10 percent of the stock is owned or controlled by or on behalf of aliens, or persons who have addresses outside of the United States, the corporation must give their names and addresses, the amount and class of stock held by each, and to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each. A municipality must submit evidence of: (*a*) The manner in which it was organized; (*b*) that it is authorized to hold a permit or lease; and (*c*) that the action proposed has been duly authorized by its governing body. Where such material has previously been filed a reference by serial number to the record in which it has been filed, together with a statement as to any amendments will be accepted.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189)

FRED A. SEATON,
Secretary of the Interior.

MARCH 15, 1958.

[F. R. Doc. 58-2124; Filed, Mar. 21, 1958; 8:47 a. m.]

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Circular Distribution List

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1996]

Subchapter C—Areas Subject to Special Laws

PART 115—REVESTED OREGON AND CALIFORNIA RAILROAD AND RECONVEYED COOS BAY WAGON ROAD GRANT LANDS IN OREGON

SALE OF TIMBER

Effective 30 days after approval hereof, the present §§ 115.15–115.84 including the center heads preceding and within such portion of this part are revoked and the following issued in lieu thereof:

§ 115.15 *Statutory authority.* The act of August 28, 1937 (50 Stat. 874, 43 U. S. C. 1181a) authorizes the sale of timber from the Revested Oregon and California and Reconveyed Coos Bay Wagon Road Lands and directs that such lands shall be managed for permanent forest production and the timber thereon sold, cut and removed in conformity with the principle of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating streamflow and contributing to the economic stability of local communities and industries and providing recreational facilities.

§ 115.16 *Definitions.* Except as the context may otherwise indicate, as the terms are used in §§ 115.15 to 115.32 and in contracts issued thereunder:

(a) "Bureau" means Bureau of Land Management, Department of the Interior.

(b) "Director" means the Director of the Bureau of Land Management.

(c) "Authorized Officer" means the Government official who has been duly authorized to sign a contract for the sale of timber from O. and C. lands or to supervise operations and take action under such contract.

(d) "O. and C. Lands" means the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands and other lands administered by the Bureau of Land Management under the provisions of the act of August 28, 1937 (50 Stat. 874).

(e) "Timber" means standing trees, downed trees, logs or forest products of any type.

§ 115.17 *Annual timber sale plan.* Plans for the sale of timber from the O. and C. lands will be developed annually. Suggestions from prospective purchasers of such timber may be received to assist in the development of a sound annual timber sale plan. Such plan shall be advertised before the commencement of each calendar year or as soon thereafter as possible in a newspaper of general circulation in the area in which the timber is located. Such advertisement shall indicate generally the probable time when the various tracts of timber included in the plan will be offered for sale, and the probable location and anticipated volumes of such tracts. The authorized officer may subsequently change, alter or amend the annual timber sale plan.

§ 115.18 *Advertising.* (a) Competitive timber sales shall be advertised in a newspaper of general circulation in the area in which the timber is located and a notice of the sale shall be posted in a conspicuous place in the office where bids are to be submitted. Such advertisement shall be published on the same day once a week for two consecutive weeks, except that sales amounting to less than 500 M board feet, need be published once only.

(b) The advertisement of sale shall state the location by legal description of the tract or tracts on which timber is being offered, the species, estimated quantities, the unit of measurement, appraised values, time and place for receiving and opening of bids, minimum deposit required, the access situation, the method of bidding, the office where additional information may be obtained, and such additional information as the authorized officer may deem necessary.

§ 115.19 *Appraisal and measurement.* All timber to be sold shall be appraised and in no case shall be sold at less than the appraised value. Such timber shall be measured by tree cruise, log scale, weight, or such other form of measurement as the authorized officer determines to be in the public interest.

§ 115.20 *Competitive sales.* All sales other than those specified in § 115.21 shall be made only after inviting competitive bids through publication and posting. Sales shall not be held sooner than one week after the last advertisement. No competitive sales shall be offered by the authorized officer unless there is access to the sale area which is available to anyone who is qualified to bid.

§ 115.21 *Negotiated sales.* (a) When it is determined by the authorized officer to be in the public interest, he may sell at not less than the appraised value, without advertising or calling for bids, timber not exceeding an estimated volume of 100 M board feet or, if the timber is not measured in board feet, a quantity not exceeding $2,000 in appraised value: *Provided,* That not more than two such sales may be made to or for the benefit of any one person, partnership, association or corporation in any period of twelve consecutive months.

(b) When it is determined by the authorized officer to be in the public interest or to be necessary for the normal conduct of logging, he may sell to a holder of a timber sale contract, during the term thereof, without advertising or calling for bids, additional timber not to exceed 250 M board feet within or near the contract area. Such sale of additional timber shall be at not less than the appraised value at the time of the additional sale.

(c) Timber on the right-of-way of a logging road and danger trees adjacent to the right-of-way may be sold at not less than the appraised value without advertising or calling for bids to (1) a permittee who constructs a road pursuant to a permit issued under this part or (2) a contractor who is constructing a road with Government funds.

§ 115.22 *Qualifications of bidders.* A bidder for the sale of timber must be (a) an individual who is a citizen of the United States, (b) a partnership composed wholly of such citizens, (c) an unincorporated association composed wholly of such citizens, or (d) a corporation authorized to transact business in the State of Oregon. A bidder must also have submitted a deposit in advance of sale as required by § 115.23.

§ 115.23 *Deposits with bids.* Sealed bids must be accompanied by a deposit of not less than 10 percent of the appraised value of the timber. For timber offered at oral auction, bidders must make a deposit of not less than 10 percent of the appraised value prior to the opening of the bidding. The authorized officer may, in his discretion, require larger deposits. Deposits may be in the form of cash, money orders, bank drafts, cashiers' or certified checks made payable to the Bureau of Land Management, or bid bonds of a corporate surety shown on the approved list of the United States Treasury Department. Upon conclusion of the bidding, the bid deposits of all bidders, except the high bidder, shall be returned.

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Except for corporate surety bid bonds, the deposit of the successful bidder will be applied on the purchase price at the time the contract is signed by the authorized officer.

§ 115.24 *Conduct of sales.* (a) Bidding at competitive sales shall be conducted by the submission of written sealed bids, oral bids, or a combination of both as directed by the authorized officer. In the event of a tie in high sealed bids, the highest bidder shall be determined by oral auction among the high bidders. If no oral bid is made which is higher than the sealed bids, the highest bidder shall then be determined by lot. In oral auction sales the high bidder must confirm his bid in writing immediately upon being declared the high bidder. Except for the first bid, no oral bid will be considered or recorded which is not higher than the highest preceding bid.

(b) At the request of the authorized officer, or the officer conducting the sale, bidders must furnish evidence of qualification in conformance with § 115.22 or if such evidence has already been furnished, make appropriate reference to the record containing it.

(c) When it is in the interest of the Government to do so the authorized officer may reject any or all bids and may waive minor deficiencies in the bids or the timber sale advertisement.

(d) If no bid is received within the time specified in the advertisement of sale, and if the authorized officer determines that there has been no significant rise in the market value of the timber, he may in his discretion, keep the sale open for not to exceed 90 days by posting notice thereof in a conspicuous place in the office where bids are to be submitted. If during such period a written bid is submitted, together with the required deposit, for not less than the advertised appraised value, a notice of such bid shall be posted immediately after receipt of such bid for seven successive days in the same office and in the same manner. If no other written bid is received during the seven day posting period, the sole bidder shall be deemed the high bidder. If, however, during such seven day posting period other written bids are received, an oral auction shall be conducted in the usual manner for those who have submitted written bids. The authorized officer shall notify those who have submitted written bids of the time and place of the oral auction. The written bids shall be considered the initial bids in such oral auction. If there is a tie in the high written bids that are submitted during the seven day posting period and if no higher bid is offered during the oral auction, the party who first submitted the high bid shall be deemed the high bidder.

§ 115.25 *Award of contract.* (a) The authorized officer may require the high bidder to furnish such information as is necessary to determine the ability of the bidder to perform the obligations of the contract. The contract shall be awarded to the high bidder, unless he is not qualified or responsible, or unless all bids are rejected. If the high bidder is not qualified or responsible or fails to sign and return the contract together with the required performance bond; the contract may be offered and awarded for the amount of the high bid to the highest of the bidders who is qualified, responsible, and willing to accept the contract.

(b) Within 30 days after receipt of the contract the successful bidder shall sign and return the contract, together with any required performance bond: *Provided,* That the authorized officer may, in his discretion, extend such period an additional 30 days if the extension is applied for in writing and granted in writing within the first 30-day period. If the successful bidder fails to comply within the stipulated time, his bid deposit shall be forfeited as liquidated damages.

§ 115.26 *Contract forms.* All sales shall be made on contract forms approved by the Director. The authorized officer may include additional provisions in the contract to cover conditions peculiar to the sale area, such as road construction, logging methods, silvicultural practices, reforestation, snag felling, slash disposal, fire prevention, fire control, and protection of improvements, watersheds and recreational values. Such additional provisions shall be made available for inspection by prospective bidders during the advertising period.

§ 115.27 *Performance bonds.* (a) A performance bond of not less than 20 percent of the total contract price will be required for contracts of $2,000 or more. When the total contract price is less than $2,000, bond requirements, if any, will be in the discretion of the authorized officer. The performance bond may be:

(1) Bond of a corporate surety shown on the approved list issued by the United States Treasury Department and executed on an approved standard form.

(2) Personal surety bond, executed on an approved standard form if the authorized officer determines the principals and bondsmen are capable of carrying out the terms of the contract; or

(3) Cash bond; or

(4) Negotiable securities of the United States

(b) Where the timber sale contract has required construction of a road the authorized officer may, upon satisfactory completion of the road construction, reduce the amount of the performance bond by the amount of all or a portion of the estimated road construction costs: *Provided, however,* That the amount of the performance bond shall, in no event, be reduced below 20 percent of the total contract price.

§ 115.28 *Payments.* (a) No part of any timber sold may be cut or removed unless advance payment has been made as provided in the contract.

(b) For sales under $2,000 the full amount shall be paid prior to or at the time the authorized officer signs the contract. For sales of $2,000 or more the authorized officer may allow payment by installments as provided below:

(1) Installment payments shall be determined by the authorized officer but in no case shall be less than 10 percent of the total purchase price. For cruise sales the first installment shall be paid prior to or at the time the authorized officer signs the contract. The second installment shall be paid prior to the commencement of cutting operations. Remaining installments shall be due and payable without notice whenever the value of the timber cut shall equal the sum of the second and subsequent installments paid by the purchaser. The total amount of the purchase price must be paid prior to 60 days before the expiration date of the contract. The purchaser shall not be entitled to a refund on a cruise sale even though the amount of timber cut, removed or designated for cutting may be less than the estimated total volume shown in the contract.

(2) For scale sales installment payments shall be made in the same manner as in subparagraph (1) of this paragraph, except that if it is determined after all designated timber has been cut that the total payments made under the contract exceed the total value of the timber measured, such excess shall be returned to the purchaser within 60 days after such determination is made.

§ 115.29 *Time for cutting.* Time for cutting timber sold shall not exceed a period of two years except that such time for cutting may be extended as provided in § 115.30.

§ 115.30 *Extension of time.* If the purchaser shows that his delay in cutting was due to causes beyond his control and without his fault or negligence, the authorized officer may grant an extension of time, not to exceed one year, upon written request of the purchaser. Such written request must be received not later than 30 days prior to the expiration date of the time for cutting but not earlier than 90 days prior thereto. Additional extensions may be granted if the purchaser submits the same type of written request not later than 30 days prior to the expiration date of an extension but not earlier than 90 days prior thereto. No extension may be granted

without reappraisal as provided in § 115.31.

§ 115.31 *Reappraisals.* If an extension is granted as provided in § 115.30, each species of timber remaining on the contract area, title to which has not passed to the purchaser, shall be reappraised by the authorized officer. Such reappraised prices shall become the new unit prices for the purpose of computing the reappraised total purchase price, except that the new unit prices shall not be less than the unit prices that were in effect during the original time for cutting or previous extension.

§ 115.32 *Assignments.* (a) The purchaser may not assign the contract or any interest therein without the written approval of the authorized officer. An assignment shall contain all the terms and conditions agreed upon by the parties thereto.

(b) The authorized officer will not approve any proposed assignment involving contract performance unless the assignee (1) is authorized to transact business in the State of Oregon; (2) submits such information as is necessary to assure the authorized officer of his ability to fulfill the contract; and (3) furnishes a performance bond as required by § 115.27 or obtains a commitment from the previous surety to be bound by the assignment when approved. Upon approval of an assignment by the authorized officer, the assignee shall be entitled to all the rights and subject to all the obligations under the contract, and the assignor shall be released from any further liability under the contract.

(Sec. 5, 50 Stat. 875; 43 U. S. C. 1181e)

HATFIELD CHILSON,
Acting Secretary of the Interior.

MARCH 18, 1958.

[F. R. Doc. 58-2125; Filed, Mar. 21, 1958; 8:47 a. m.]

This Circular replaces Circulars 1837, 1849, 1883 and 1951

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Replaced by 1999 (11.58)

TITLE 43--PUBLIC LANDS: INTERIOR

Chapter 1--Bureau of Land Management, Department of the Interior

Subchapter P—Practice

[Circular No. 1997]

PART 221—APPEALS AND CONTESTS

MISCELLANEOUS AMENDMENTS

1. Section 221.2 is amended to read as follows:

§ 221.2 *Appeal; how taken, filing fee, mandatory time limit.* (a) A person who wishes to appeal to the Director must file in the office of the officer who made the decision (not the office of the Director) a notice that he wishes to appeal. The notice of appeal must give the serial number or other identification of the case and must be transmitted in time to be filed in the office where it is required to be filed within 30 days after the person taking the appeal is served with the decision he is appealing from. The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make.

(b) Except where an agency of the Federal Government or of a State or territorial government or political subdivision thereof or a municipal corporation is the appellant, a filing fee of $5 must be paid for each separate application, claim, entry, permit, lease, protest, or similar filing or interest on which the appellant is seeking favorable action. The consolidation of appeals will not relieve each appellant of paying the same filing fee that he would have to pay if he took his appeal separately. The filing fee should accompany the notice of appeal but in any event must be received in the office where the notice of appeal is required to be filed within the time allowed for filing the notice of appeal.

(c) No extension of time will be granted for filing the notice of appeal or paying the filing fee. If a notice of appeal is filed or the filing fee is paid after the grace period provided in § 221.92, the notice of appeal will not be considered and the case will be closed by the officer from whose decision the appeal is taken. If the notice of appeal is filed or the filing fee is paid during the grace period provided in § 221.92 and the delay in filing is not waived, as provided in that section, the notice of appeal will not be considered and the case will be closed by the Director.

2. Section 221.3 is amended to read as follows:

§ 221.3 *Statement of reasons, written arguments, briefs.* If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Director (address: Director, Bureau of Land Management, Washington 25, D. C.) within 30 days after the notice of appeal was filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in § 221.98, unless the delay in filing is waived as provided in § 221.92. In any case the appellant will be permitted to file in such office additional statements of reasons and written arguments or briefs within the 30-day period after he filed the notice of appeal.

3. Section 221.4 is amended to read as follows:

§ 221.4 *Service of notice of appeal and of other documents.* The appellant must serve a copy of the notice of appeal and of any statement of reasons, written arguments or briefs on each adverse party named in the decision appealed from, in the manner prescribed in § 221.95, not later than 15 days after filing the document. Failure to serve within the time required will subject the appeal to summary dismissal as provided in § 221.98. Proof of such service as required by § 221.95 must be filed in the office of the Director (address: Director, Bureau of Land Management, Washington 25, D. C.) within 15 days after service unless filed with the notice of appeal.

4. Section 221.5 is amended to read as follows:

§ 221.5 *Answers.* If any party served with a notice of appeal wishes to participate in the proceeding on appeal, he must file an answer within 30 days after service on him of the notice of appeal or statement of reasons where such statement was not included in the notice of appeal. If additional reasons, written arguments, or briefs are filed by the appellant, the adverse party shall have 30 days after service thereof on him within which to answer them. The answer must state the reasons why the answerer thinks the appeal should not be sustained. Answers must be filed in the office of the Director (address: Director, Bureau of Land Management, Washington 25, D. C.) and must be served on the appellant, in the manner prescribed in § 221.95, not later than 15 days thereafter. Proof of such service, as required by § 221.95, must be filed in the office of the Director (see address above) within 15 days after service. Failure to answer will not result in a default. If an answer is not filed and served within the time required, it may be disregarded in deciding the appeal, unless the delay in filing is waived as provided in § 221.92.

5. Section 221.32 is amended to read as follows:

§ 221.32 *Appeal; how taken, filing fee, mandatory time limit.* (a) A person who wishes to appeal to the Secretary must file in the office of the Director (address: Director, Bureau of Land Management, Washington 25, D. C.) a notice that he wishes to appeal. The notice of appeal must give the serial number or other identification of the case and must be transmitted in time to be filed in the Director's office within 30 days after the person taking the appeal is served with the decision he is appealing from. The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make.

(b) Except where an agency of the Federal Government or of a State or territorial government or political subdivision thereof or a municipal corporation is the appellant, a filing fee of $5 must be paid for each separate application, claim, entry, permit, lease, protest, or similar filing or interest on which the

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appellant is seeking favorable action. The consolidation of appeals will not relieve each appellant of paying the same filing fee that he would have to pay if he took his appeal separately. The filing fee should accompany the notice of appeal but in any event must be received in the Director's office within the time allowed for filing the notice of appeal.

(c) No extension of time will be granted for filing the notice of appeal or paying the filing fee. If a notice of appeal is filed or the filing fee is paid after the grace period provided in § 221.92, the notice of appeal will not be considered and the case will be closed by the Director. If the notice of appeal is filed or the filing fee is paid during the grace period provided in § 221.92 and the delay in filing is not waived, as provided in that section, the notice of appeal will not be considered and the case will be closed by the Secretary.

6. Section 221.33 is amended to read as follows:

§ 221.33 *Statement of reasons, written arguments, briefs.* If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Secretary (address: Secretary of the Interior, Washington 25, D. C.) within 30 days after the notice of appeal was filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in § 221.98, unless the delay in filing is waived as provided in § 221.92. In any case the appellant will be permitted to file in such office additional statements of reasons and written arguments or briefs within the 30-day period after he filed the notice of appeal.

7. Section 221.34 is amended to read as follows:

§ 221.34 *Service of notice of appeal and of other documents.* The appellant must serve a copy of the notice of appeal and of any statement of reasons, written arguments or briefs on each adverse party named in the decision appealed from, in the manner prescribed in § 221.95, not later than 15 days after filing the document. Failure to serve within the time required will subject the appeal to summary dismissal as provided in § 221.98. Proof of such service as required by § 221.95 must be filed in the office of the Secretary (address: Secretary of the Interior, Washington 25, D. C.) within 15 days after service unless filed with the notice of appeal.

8. Section 221.35 is amended to read as follows:

§ 221.35 *Answers.* If any party served with a notice of appeal wishes to participate in the proceeding on appeal, he must file an answer within 30 days after service on him of the notice of appeal or statement of reasons where such statement was not included in the notice of appeal. If additional reasons, written arguments, or briefs are filed by the appellant, the adverse party shall have 30 days after service thereof on him within which to answer them. The answer must state the reasons why the answerer thinks the appeal should not be sustained. Answers must be filed in the office of the Secretary (address: Secretary of the Interior, Washington 25, D. C.) and must be served on the appellant, in the manner prescribed in § 221.95, not later than 15 days thereafter. Proof of such service, as required by § 221.95, must be filed in the office of the Secretary (see address above) within 15 days after service. Failure to answer will not result in a default. If an answer is not filed and served within the time required, it may be disregarded in deciding the appeal, unless the delay in filing is waived as provided in § 221.92.

9. Section 221.92 is amended to read as follows:

§ 221.92 *Filing of documents.* (a) A document is filed in the office where the filing is required only when the document is received in that office during the office hours when filing is permitted and the document is received by a person authorized to receive it.

(b) Whenever a document is required under this part to be filed within a certain time and it is not received in the proper office, as provided in paragraph (a) of this section, during that time, the delay in filing will be waived if the document is filed not later than 10 days after it was required to be filed and it is determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. Determinations under this paragraph shall be made by the officer before whom is pending the appeal or contest in connection with which the document is required to be filed. This paragraph does not apply to requests for postponement of hearings under §§ 221.13 and 221.71 and requests for relief from reporter's fees under § 221.75.

These amendments shall take effect upon publication in the FEDERAL REGISTER as to all filings required to be made on or after that date.

(R. S. 2478; 43 U. S. C. 1201)

HATFIELD CHILSON,
Acting Secretary of the Interior.

MARCH 18, 1958.

[F. R. Doc. 58-2126; Filed, Mar. 21, 1958; 8:47 a. m.]

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Circular 1999

Subchapter P—Practice

Part 221—Appeals and Contests

AUTHORITY: §§ 221.1 to 221.107 issued under R. S. 2478, as amended; 43 U. S. C. 1201.

SUBPART A—APPEALS TO THE DIRECTOR OF THE BUREAU OF LAND MANAGEMENT[1]

PLEADINGS

§ 221.1 *Who may appeal.* Any party to a case who is adversely affected by a decision of an officer of the Bureau of Land Management other than the Director or persons signing for the Director, shall have a right of appeal to the Director.

§ 221.2 *Appeal; how taken, filing fee, mandatory time limit.* (a) A person who wishes to appeal to the Director must file in the office of the officer who made the decision (not the office of the Director) a notice that he wishes to appeal. The notice of appeal must give the serial number or other identification of the case and must be transmitted in time to be filed in the office where it is required to be filed within 30 days after the person taking the appeal is served with the decision he is appealing from. The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make.

(b) Except where an agency of the Federal Government or of a State or territorial government or political subdivision thereof or a municipal corporation is the appellant, a filing fee of $5 must be paid for each separate application, claim, entry, permit, lease, protest, or similar filing or interest on which the appellant is seeking favorable action. The consolidation of appeals will not relieve each appellant of paying the same filing fee that he would have to pay if he took his appeal separately. The filing

[1] In addition to the material under this heading, the general provisions under Subpart D of this part should be consulted.

fee should accompany the notice of appeal but in any event must be received in the office where the notice of appeal is required to be filed within the time allowed for filing the notice of appeal.

(c) No extension of time will be granted for filing the notice of appeal or paying the filing fee. If a notice of appeal is filed or the filing fee is paid after the grace period provided in § 221.92, the notice of appeal will not be considered and the case will be closed by the officer from whose decision the appeal is taken. If the notice of appeal is filed or the filing fee is paid during the grace period provided in § 221.92 and the delay in filing is not waived, as provided in that section, the notice of appeal will not be considered and the case will be closed by the Director.

§ 221.3 *Statement of reasons, written arguments, briefs.* If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Director (address: Director, Bureau of Land Management, Washington 25, D. C.) within 30 days after the notice of appeal was filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in § 221.98, unless the delay in filing is waived as provided in § 221.92. In any case the appellant will be permitted to file in such office additional statements of reasons and written arguments or briefs within the 30-day period after he filed the notice of appeal.

§ 221.4 *Service of notice of appeal and of other documents.* The appellant must serve a copy of the notice of appeal and of any statement of reasons, written arguments or briefs on each adverse party named in the decision appealed from, in the manner prescribed in § 221.95, not later than 15 days after filing the document. Failure to serve within the time required will subject the appeal to summary dismissal as provided in § 221.98. Proof of such service as required by § 221.95 must be filed in the office of the Director (address: Director, Bureau of Land Management, Washington 25, D. C.) within 15 days after service unless filed with the notice of appeal.

§ 221.5 *Answers.* If any party served with a notice of appeal wishes to participate in the proceeding on appeal, he must file an answer within 30 days after service on him of the notice of appeal or statement of reasons where such statement was not included in the notice of appeal. If additional reasons, written arguments, or briefs are filed by the appellant, the adverse party shall have 30 days after service thereof on him within which to answer them. The answer must state the reasons why the answerer thinks the appeal should not be sustained. Answers must be filed in the office of the Director (address: Director, Bureau of Land Management, Washington 25, D. C.) and must be served on the appellant, in the manner prescribed in § 221.95, not later than 15 days thereafter. Proof of such service, as required by § 221.95, must be filed in the office of the Director (see address above) within 15 days after service. Failure to answer will not result in a default. If an answer is not filed and served within the time required, it may be disregarded in deciding the appeal, unless the delay in filing is waived as provided in § 221.92.

REQUEST FOR HEARING; ORAL ARGUMENT

§ 221.6 *Hearings on appeals involving questions of fact.* Either an appellant or an adverse party may, if he desires a hearing to present evidence on an issue of fact, request that the case be assigned to a Field Commissioner of the Bureau of Land Management for such a hearing. Such a request must be made in writing and filed with the Director within 30 days after answer is due and a copy of the request should be served on the opposing party in the case. The allowance of a request for hearing is within the discretion of the Director, and the Director may, on his own motion, refer any case to a Field Commissioner for a hearing on an issue of fact. If a hearing is ordered, the Director will specify the issues upon which the hearing is to be held.

§ 221.7 *Deposit.* If a request for a hearing is granted, a deposit of $20 toward reporters' fees will be required of the parties who made the request. Other parties who appear at the hearing will be requested to pay their share of the fees at that time.

§ 221.8 *Oral argument.* The Director may, in his discretion, grant an opportunity for oral argument before him or a person designated by him.

DECISIONS BY DIRECTOR

§ 221.9 *Action by Director on appeal.* The Director will render a written decision in each case appealed to him. Such decisions will be served on all parties and shall be subject to an appeal to the Secretary as provided in § 221.31.

§ 221.10 *Effect of failure to appeal.* When any party fails to appeal to the Secretary from an adverse decision of the Director, that decision shall as to such party be final and will not be disturbed except for fraud or for gross irregularity.

PROCEEDINGS BEFORE FIELD COMMISSIONER

§ 221.11 *Prehearing conferences.* (a) The Field Commissioner may, in his discretion, on his own motion or motion of one of the parties or of the Bureau of Land Management, direct the parties or their representatives to appear at a specified time and place for a prehearing conference to consider: (1) The possibility of obtaining stipulations, admissions of facts and agreements to the introduction of documents, (2) the limitation of the number of expert witnesses, and (3) any other matters which may aid in the disposition of the proceedings before the Field Commissioner or before the Director.

(b) The Field Commissioner shall make an order which recites the action taken at the conference and the agreements made as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements. Such order shall control the subsequent course of the proceeding before the Field Commissioner unless modified for good cause, by subsequent order.

§ 221.12 *Fixing of place and date for hearing; notice.* The Field Commissioner shall fix a place and date for the hearing and notify all parties and the Bureau.

§ 221.13 *Postponements.* (a) Postponements of hearings will not be allowed upon the request of any party or the Bureau except upon a showing of good cause and proper diligence. A request for a postponement must be served upon all parties to the proceeding and filed in the office of the Field Commissioner at least 10 days prior to the date of the hearing. In no case will a request for postponement served or filed less than 10 days in advance of the hearing or made at the hearing be granted unless the party requesting it demonstrates that an extreme emergency occurred which could not have been anticipated and which justifies beyond question the granting of a postponement. In any such emergency, if time does not permit of the filing of such request prior to the hearing, it may be made orally at the hearing.

(b) The request for a postponement must state in detail the reasons why a postponement is necessary. If a request is based upon the absence of witnesses, it must state what the substance of the testimony of the absent witnesses would be. No postponement will be granted if the adverse party or parties file with the Field Commissioner within 5 days after the service of the request a statement admitting that the witnesses on account of whose absence the postponement is desired would, if present, testify as stated in the request. If time does not permit the filing of such statement prior to the hearing, it may be made orally at the hearing.

(c) Only one postponement will be allowed to a party on account of the absence of witnesses unless the party requesting a further postponement shall at the time apply for an order to take the testimony of the alleged absent witness by deposition.

§ 221.14 *Authority of the Field Commissioner.* The Field Commissioner is vested with general authority to conduct the hearing in an orderly and judicial manner, including authority to subpoena witnesses and to take and cause depositions to be taken in accordance with the act of January 31, 1903 (32 Stat. 790; 43 U. S. C. 102–106), to administer oaths, to call and question witnesses, to make proposed findings of fact and to take such other actions in connection with the hearing as may be prescribed by the Director in referring the case for hearing. The issuance of subpoenas, the attendance of witnesses, and the taking of depositions shall be governed by the applicable provisions of Subpart D of this part.

§ 221.15 *Conduct of hearing.* So far as not inconsistent with the prehearing order, the Field Commissioner may seek to obtain stipulations as to material facts. Unless the Field Commissioner directs otherwise, the appellant will present his evidence on the facts at issue following which the other parties and the Bureau of Land Management will present their evidence on such issues.

§ 221.16 *Evidence.* (a) All oral testimony shall be under oath and witnesses shall be subject to cross-examination. The Field Commissioner may question any witnesses. Documentary evidence may be received if pertinent to any issue. The Field Commissioner will summarily stop examination and exclude testimony which is obviously irrelevant and immaterial.

(b) Objections to evidence will be ruled upon by the Field Commissioner. Such rulings will be considered, but need not be separately ruled upon, by the Director in connection with his decision. Where a ruling of a Field Commissioner sustains an objection to the admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the substance of the excluded evidence and the objecting party may then make an offer of proof in rebuttal.

§ 221.17 *Reporter's fees.* (a) Where a hearing is requested, each party and the Bureau will be required to pay the reporter's fees covering the party's or the Bureau's direct evidence and cross examination of other witnesses.

(b) Where a hearing is ordered by the Director upon his own motion, each party who prevails in the Director's decision will be required to pay the reporter's fees covering the party's direct evidence and cross examination of other witnesses. The remainder of the reporter's fees will be paid by the Government.

(c) Reporter's fees will be at rates established for the local courts or, if the reporting is done pursuant to a contract, at rates established by the contract. The Field Commissioner may require the parties to make reasonable deposits for reporter's fees from time to time in advance of taking testimony. Any part of a deposit not used will be returned to the depositor except that deposits which are required pursuant to § 221.7 in advance of a hearing will not be returned if the party making the deposit does not appear at the hearing, but will be used to pay the reporter's appearance fee, if any, and the remainder will be forfeited to the United States.

§ 221.18 *Copies of transcript.* Each party must pay for any copies of the transcript obtained by him except where the reporter's fees paid enable the Bureau to furnish him with a copy of the transcript without additional cost. Unless a summary of the evidence is stipulated to, the Government will file the original copy of the transcript with the case record.

§ 221.19 *Summary of evidence.* The parties and the Bureau may, with the consent of the Field Commissioner, agree that a summary of the evidence approved by the Field Commissioner may be filed in the case in lieu of a transcript. In such case the Field Commissioner will prepare the summary or have it prepared and upon agreement of the parties make it a part of the case record. If, on appeal to the Secretary, a party wishes to utilize the transcript instead of the summary, he must furnish at his expense a copy of the transcript for the case record.

§ 221.20 *Action by Field Commissioner.* Upon completion of the hearing and the incorporation of the summary or transcript in the record, the Field Commissioner will send the record and proposed findings of fact on the issues presented at the hearing to the Director. The proposed findings of fact will not be served upon the parties; however, the parties and the Bureau may, within 15 days after the completion of the transcript or the summary of the evidence, file with the Director such briefs or statements as they may wish respecting the facts developed at the hearing. Any findings of fact made or adopted by the Director will be subject to attack in an appeal to the Secretary.

SUBPART B—APPEALS TO SECRETARY OF THE INTERIOR [1]

§ 221.31 *Right of appeal to the Secretary of the Interior.* Any party adversely affected may appeal to the Secretary of the Interior from a final decision of the Director, whether such final decision is on an appeal or is an original decision, except from such a decision which, prior to promulgation, has been approved by the Secretary. No appeal, however, may be taken from a decision of the Director affirming a decision of a subordinate official of the Bureau in any case where the party adversely affected shall have failed to appeal from the decision of such official.

§ 221.32 *Appeal; how taken, filing fee, mandatory time limit.* (a) A person who wishes to appeal to the Secretary must file in the office of the Director (address: Director, Bureau of Land Management, Washington 25, D. C.) a notice that he wishes to appeal. The notice of appeal must give the serial number or other identification of the case and must be transmitted in time to be filed in the Director's office within 30 days after the person taking the appeal is served with the decision he is appealing from. The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make.

(b) Except where an agency of the Federal Government or of a State or territorial government or political subdivision thereof or a municipal corporation is the appellant, a filing fee of $5 must be paid for each separate application, claim, entry, permit, lease, protest, or similar filing or interest on which the appellant is seeking favorable action. The consolidation of appeals will not relieve each appellant of paying the same filing fee that he would have to pay if he took his appeal separately. The filing fee should accompany the notice of appeal but in any event must be received in the Director's office within the time allowed for filing the notice of appeal.

(c) No extension of time will be granted for filing the notice of appeal or paying the filing fee. If a notice of appeal is filed or the filing fee is paid after the grace period provided in § 221.92, the notice of appeal will not be considered and the case will be closed by the Director. If the notice of appeal is filed or the filing fee is paid during the grace period provided in § 221.92 and the delay in filing is not waived, as provided in that section, the notice of appeal will not be considered and the case will be closed by the Secretary.

[1] In addition to the material under this heading, the general provisions under Subpart D of this part should be consulted.

§ 221.33 *Statement of reasons, written arguments, briefs.* If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Secretary (address: Secretary of the Interior, Washington 25, D. C.) within 30 days after the notice of appeal was filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in § 221.98, unless the delay in filing is waived as provided in § 221.92. In any case the appellant will be permitted to file in such office additional statements of reasons and written arguments or briefs within the 30-day period after he filed the notice of appeal.

§ 221.34 *Service of notice of appeal and of other documents.* The appellant must serve a copy of the notice of appeal and of any statement of reasons, written arguments or briefs on each adverse party named in the decision appealed from, in the manner prescribed in § 221.95, not later than 15 days after filing the document. Failure to serve within the time required will subject the appeal to summary dismissal as provided in § 221.98. Proof of such service as required by § 221.95 must be filed in the office of the Secretary (address: Secretary of the Interior, Washington 25, D. C.) within 15 days after service unless filed with the notice of appeal.

§ 221.35 *Answers.* If any party served with a notice of appeal wishes to participate in the proceeding on appeal, he must file an answer within 30 days after service on him of the notice of appeal or statement of reasons where such statement was not included in the notice of appeal. If additional reasons, written arguments, or briefs are filed by the appellant, the adverse party shall have 30 days after service thereof on him within which to answer them. The answer must state the reasons why the answerer thinks the appeal should not be sustained. Answers must be filed in the office of the Secretary (address: Secretary of the Interior, Washington 25, D. C.) and must be served on the appellant, in the manner prescribed in § 221.95, not later than 15 days thereafter. Proof of such service, as required by § 221.95, must be filed in the office of the Secretary (see address above) within 15 days after service. Failure to answer will not result in a default. If an answer is not filed and served within the time required, it may be disregarded in deciding the appeal, unless the delay in filing is waived as provided in § 221.92.

§ 221.36 *Oral argument.* The Secretary may in his discretion grant an opportunity for oral argument before him or a person designated by him.

§ 221.37 *Finality of decision.* No appeal will lie in the Department from a decision of the Secretary.

SUBPART C—CONTESTS AND PROTESTS [1]

PRIVATE CONTESTS AND PROTESTS

§ 221.51 *By whom private contest may be initiated.* Any person who claims title to or an interest in land adverse to any other person claiming title to or an interest in such land or who seeks to acquire a preference right pursuant to the act of May 14, 1880, as amended (43 U. S. C. 185), or the act of March 3, 1891 (43 U. S. C. 329), may initiate proceedings to have the claim of title or interest adverse to his claim invalidated for any reason not shown by the records of the Bureau of Land Management. Such a proceeding will constitute a private contest and will be governed by the regulations in this part.

§ 221.52 *Protests.* Where the elements of a contest are not present, any objection raised by any person to any action proposed to be taken in any proceeding before the Bureau will be deemed to be a protest and such action thereon will be taken as is deemed to be appropriate in the circumstances.

§ 221.53 *Initiation of contest.* Any person desiring to initiate a private contest must file a complaint in the land office which has jurisdiction over the land involved, or, if there is no such land office, in the office of the Director, Bureau of Land Management, Washington 25, D. C. The contestant must serve a copy of the complaint on the contestee not later than 15 days after filing the complaint and must file proof of such service, as required by § 221.95, in the office where the complaint was filed within 15 days after service.

§ 221.54 *Contents of complaint.* The complaint shall contain the following information, under oath:

(a) The name and address of each party interested, including the age of each heir of any deceased entryman.

(b) A legal description of the land involved.

(c) A reference, so far as known to the contestant, to any proceedings pending for the acquisition of title to, or an interest in, such land.

(d) A statement in clear and concise language of the facts constituting the grounds of contest.

(e) A statement of the law under which contestant claims or intends to acquire title to, or an interest in, the land and of the facts showing that he is qualified to do so.

(f) A statement that the proceeding is not collusive or speculative but is instituted and will be diligently pursued in good faith.

(g) A request that the contestant be allowed to prove his allegations and that the adverse interest be invalidated.

(h) The office in which the complaint is filed and the address to which papers shall be sent for service on the contestant.

(i) A notice that unless the contestee files an answer to the complaint in such office within 30 days after service of the notice, the allegations of the complaint will be taken as confessed.

§ 221.55 *Amendment of complaint.* Except insofar as the Manager, Examiner, Director or Secretary may raise issues in connection with deciding a contest, issues not raised in a complaint may not be raised later by the contestant unless the examiner permits the complaint to be amended after due notice to the other parties and an opportunity to object.

§ 221.56 *Corroboration required.* All allegations of fact in the complaint which are not matters of official record or capable of being judicially noticed and which, if proved, would invalidate the adverse interest must be corroborated under oath by the statement of witnesses. Each such allegation of fact must be corroborated by the statement of at least one witness having personal knowledge of the alleged fact and such fact must be set forth in the statement. All statements by witnesses shall be attached to the complaint.

§ 221.57 *Filing fee.* Each complaint must be accompanied by a filing fee of $10 and a deposit of $20 toward reporter's fees. Any complaint which is not accompanied by the required fee and deposit will not be accepted for filing.

§ 221.58 *Service.* (a) The complaint must be served upon every contestee. If the contestee is of record in the land office, service may be made and proved as provided in § 221.95. If the person to be served is not of record in the land office, proof of service may be shown by a written statement of the person who made personal service, by post-office return receipt showing personal delivery, or by an acknowledgment of service. In certain circumstances, service may be made by publication as provided in § 221.60.

(b) When the contest is against the heirs of a deceased entryman, the notice shall be served on each heir. If the person to be personally served is an infant or a person who has been legally adjudged of unsound mind, service of notice shall be made by delivering a copy of the notice to the legal guardian or committee, if there be one, of such infant

[1] In addition to the material under this heading, the general provisions under Subpart D of this part should be consulted.

or person of unsound mind; if there be none, then by delivering a copy of the notice to the person having the infant or person of unsound mind in charge.

§ 221.59 *Summary dismissal; waiver of defect in service.* If a complaint when filed does not meet all the requirements of §§ 221.54 and 221.56 or if the complaint is not served upon each contestee as required by § 221.58, the complaint will be summarily dismissed by the manager and no answer need be filed. However, where prior to the summary dismissal of a complaint a contestee answers without questioning the service or proof of service of the complaint, any defect in service will be deemed waived.

§ 221.60 *When service may be made by publication.* When the contestant has made diligent search and inquiry to locate the contestee, and cannot locate him, the contestant may proceed with service by publication after first filing with the Manager an affidavit which shall:

(a) State that the contestee could not be located after diligent search and inquiry made within 15 days prior to the filing of the affidavit;

(b) Be corroborated by the affidavits of two persons who live in the vicinity of the land which state that they have no knowledge of the contestee's whereabouts or which give his last known address;

(c) State the last known address of the contestee; and

(d) State in detail the efforts and inquiries made to locate the party sought to be served.

§ 221.61 *Contents of published notice.* The published notice must give the names of the parties to the contest, legal description of the land involved, the substance of the charges contained in the complaint, the office in which the contest is pending, and a statement that upon failure to file an answer in such office within 30 days after the completion of publication of such notice, the allegations of the complaint will be taken as confessed. The published notice shall also contain a statement of the dates of publication.

§ 221.62 *Publication, mailing and posting of notice.* (a) Notice by publication shall be made by publishing notice at least once a week for five successive weeks in some newspaper of general circulation in the county in which the land in contest lies.

(b) Within 15 days after the first publication of a notice, the contestant shall send a copy of the notice and the complaint by registered or certified mail, return receipt requested, to the contestee at his last known address and also to the contestee in care of the post office nearest the land. The return receipts shall be filed in the office in which the contest is pending.

(c) A copy of the notice as published shall be posted in the office where the contest is pending and also in a conspicuous place upon the land involved. Such postings shall be made within 15 days after the first publication of the notice.

§ 221.63 *Proof of service.* (a) Proof of publication of the notice shall be made by filing in the office where the contest is pending a copy of the notice as published and the affidavit of the publisher or foreman of the newspaper publishing the same showing the publication of the notice in accordance with § 221.62.

(b) Proof of posting of the notice shall be by affidavit of the person who posted the notice on the land and by the certificate of the Manager or the Director as to posting in his office.

(c) Proof of the mailing of notice shall be by affidavit of the person who mailed the notice to which shall be attached the return receipt.

§ 221.64 *Answer to complaint.* Within 30 days after service of the complaint or after the last publication of the notice, the contestee must file in the office where the contest is pending an answer specifically meeting and responding to the allegations of the complaint, together with proof of service of a copy of the answer upon a contestant as provided in § 221.95. The answer shall contain or be accompanied by the address to which all notices or other papers shall be sent for service upon contestee.

§ 221.65 *Action by Manager.* (a) If an answer is not filed as required, the allegations of the complaint will be taken as admitted by the contestee and the Manager will decide the case without a hearing.

(b) If an answer is filed and unless all parties waive a hearing, the Manager will refer the case to an examiner upon determining that the elements of a private contest appear to have been established.

§ 221.66 *Amendment of answer.* At the hearing, any allegation not denied by the answer will be considered admitted. The examiner may permit the answer to be amended after due notice to other parties and an opportunity to object.

GOVERNMENT CONTESTS

§ 221.67 *Government contests.* The Government may initiate contests for any cause affecting the legality or validity of any entry or settlement or mining claim.

§ 221.68 *Proceedings in Government contests.* The proceedings in Government contests shall be governed by the rules relating to proceedings in private contests with the following exceptions:

(a) No corroboration shall be required of a Government complaint and the complaint need not be under oath.

(b) No filing fee or deposit toward reporter's fee shall be required of the Government.

(c) Any action required of the contestant may be taken by any authorized Government employee.

(d) The statements required by § 221.54 (e) and (f) need not be included in the complaint.

(e) No posting of notice of publication on the land in issue shall be required of the Government.

PROCEEDINGS BEFORE THE EXAMINER

§ 221.69 *Prehearing conferences.* (a) The Examiner may in his discretion, on his own motion or on motion of one of the parties, or of the Bureau, direct the parties or their representatives to appear at a specified time and place for a prehearing conference to consider: (1) The simplification of the issues, (2) the necessity of amendments to the pleadings, (3) the possibility of obtaining stipulations, admissions of facts and agreements to the introduction of documents, (4) the limitation of the number of expert witnesses, and (5) such other matters as may aid in the disposition of the proceedings.

(b) The Examiner shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admission or agreements. Such order shall control the subsequent course of the proceedings before the Examiner unless modified for good cause, by subsequent order.

§ 221.70 *Notice of hearing.* The examiner shall fix a place and date for the hearing and notify all parties and the Bureau at least 30 days in advance of the date set, unless the parties and the Bureau request or consent to an earlier date. The notice shall include (a) the time, place, and nature of the hearing,

(b) the legal authority and jurisdiction under which the hearing is to be held, and (c) the matters of fact and law asserted.

§ 221.71 *Postponements.* (a) Postponements of hearings will not be allowed upon the request of any party or the Bureau except upon a showing of good cause and proper diligence. A request for a postponement must be served upon all parties to the proceeding and filed in the office of the Examiner at least 10 days prior to the date of the hearing. In no case will a request for postponement served or filed less than 10 days in advance of the hearing or made at the hearing be granted unless the party requesting it demonstrates that an extreme emergency occurred which could not have been anticipated and which justifies beyond question the granting of a postponement. In any such emergency, if time does not permit the filing of such request prior to the hearing, it may be made orally at the hearing.

(b) The request for a postponement must state in detail the reasons why a postponement is necessary. If a request is based upon the absence of witnesses, it must state what the substance of the testimony of the absent witnesses would be. No postponement will be granted if the adverse party or parties file with the Examiner within 5 days after the service of the request a statement admitting that the witnesses on account of whose absence the postponement is desired would, if present, testify as stated in the request. If time does not permit the filing of such statement prior to the hearing, it may be made orally at the hearing.

(c) Only one postponement will be allowed to a party on account of the absence of witnesses unless the party requesting a further postponement shall at the time apply for an order to take the testimony of the alleged absent witness by deposition.

§ 221.72 *Authority of the Examiner.* The Examiner is vested with general authority to conduct the hearing in an orderly and judicial manner, including authority to subpoena witnesses and to take and cause depositions to be taken in accordance with the act of January 31, 1903 (43 U. S. C. 102–106), to administer oaths, to call and question witnesses, and to make a decision. The issuance of subpoenas, the attendance of witnesses and the taking of depositions shall be governed by the applicable provisions of Subpart D of this part.

§ 221.73 *Conduct of hearing.* So far as not inconsistent with a prehearing order, the Examiner may seek to obtain stipulations as to material facts and the issues involved and may state any other issues on which he may wish to have evidence presented. He may exclude irrelevant issues. The contestant will then present his case following which the other parties (and in private contests the Bureau, if it intervenes) will present their cases.

§ 221.74 *Evidence.* (a) All oral testimony shall be under oath and witnesses shall be subject to cross examination. The Examiner may question any witness. Documentary evidence may be received if pertinent to any issue. The Examiner will summarily stop examination and exclude testimony which is obviously irrelevant and immaterial.

(b) Objections to evidence will be ruled upon by the Examiner. Such rulings will be considered, but need not be separately ruled upon, by the Director in connection with his decision. Where a ruling of an Examiner sustains an objection to the admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the substance of the excluded evidence, and the objecting party may then make an offer of proof in rebuttal.

§ 221.75 *Reporter's fees; transcript.* (a) Each party and the Bureau will be required to pay the reporter's fees covering the party's or the Bureau's direct evidence and cross-examination of other witnesses except that

(1) In the case of a private contest, if the ultimate decision is adverse to the contestant, he must in addition pay all the reporter's fees otherwise payable by the contestee.

(2) In the case of a Government contest, if the ultimate decision is adverse to the Government, the Bureau must pay all the reporter's fees otherwise payable by the contestee.

(3) In the case of a Government contest the contestee may be relieved of paying his share of the reporter's fees if he is financially unable to pay his share. In order to secure such relief he must file with the examiner at least 15 days prior to the date set for the hearing a request for such relief, supported by an affidavit setting forth in detail facts showing his financial inability to pay. If the examiner in his discretion determines that the applicant for relief is financially unable to pay his share of the reporter's fees, the Bureau will bear the cost of such share.

(b) Except where a party is relieved of paying the reporter's fees pursuant to subparagraph (3) of paragraph (a) of this section, each party shall be required by the examiner to make reasonable deposits for reporter's fees from time to time in advance of taking testimony. Such deposits must be sufficient to cover all reporter's fees for which the party may ultimately be liable under paragraph (a) of this section. Any part of a deposit not used will be returned to the depositor upon the final determination of the case except that deposits which are required to be made when a complaint is filed will not be returned if the party making the deposit does not appear at the hearing, but will be used to pay the reporter's appearance fee, if any, and the remainder will be forfeited to the United States. Reporter's fees will be at the rates established for the local courts, or, if the reporting is done pursuant to a contract, at rates established by the contract.

(c) Each party must pay for any copies of the transcript obtained by him except where the reporter's fees paid enable the Bureau to furnish him with a copy of the transcript without additional cost.

§ 221.76 *Findings and conclusions; decision by examiner; submission to Director for decision.* (a) At the conclusion of the testimony the parties at the hearing shall be given a reasonable time by the examiner, considering the number and complexity of the issues and the amount of testimony, to submit to the examiner proposed findings of fact and conclusions of law and reasons in support thereof or to stipulate to a waiver of such findings and conclusions.

(b) As promptly as possible after the time allowed for presenting proposed findings and conclusions, the examiner shall make findings of fact and conclusions of law (unless waiver has been stipulated), giving the reasons therefor, upon all the material issues of fact, law, or discretion presented on the record. The examiner may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. He must rule upon each proposed finding and conclusion submitted by the parties and such ruling shall be shown in the record. The examiner will render a written decision in the case which shall become a part of the record and shall include a statement of his findings and conclusions, as well as the reasons or basis therefor, and his rulings upon the findings and conclusions pro-

posed by the parties if such rulings do not appear elsewhere in the record. A copy of the decision will be served upon all parties to the case.

(c) The Director may require, in any designated case, that the examiner make only a recommended decision and that the decision and the record be submitted to the Director for consideration. The recommended decision shall meet all the requirements for a decision set forth in paragraph (b) of this section. The Director shall then make the initial decision in the case. This decision shall include such additional findings and conclusions as do not appear in the recommended decision and the record shall include such rulings on proposed findings and conclusions submitted by the parties as have not been made by the examiner.

§ 221.77 *Appeal to Director.* Any party, including the Government, adversely affected by the decision of the Examiner may appeal to the Director as provided in Subpart A of this part. No further hearing will be allowed in connection with the appeal to the Director but the Director, after considering the evidence, may remand any case for further hearing if he considers such action necessary to develop the facts.

SUBPART D—GENERAL PROVISIONS

§ 221.91 *Definitions.* As used in this part:

(a) "Secretary" means the Secretary of the Interior or his authorized representatives.

(b) "Director" means the Director of the Bureau of Land Management, the Associate Director or an Assistant Director.

(c) "Bureau" means Bureau of Land Management.

(d) "Field Commissioner" includes an examiner designated to hold a hearing under Subpart A of this part.

§ 221.92 *Filing of documents.* (a) A document is filed in the office where the filing is required only when the document is received in that office during the office hours when filing is permitted and the document is received by a person authorized to receive it.

(b) Whenever a document is required under this part to be filed within a certain time and it is not received in the proper office, as provided in paragraph (a) of this section, during that time, the delay in filing will be waived if the document is filed not later than 10 days after it was required to be filed and it is determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. Determinations under this paragraph shall be made by the officer before whom is pending the appeal or contest in connection with which the document is required to be filed. This paragraph does not apply to requests for postponement of hearings under §§ 221.13 and 221.71 and requests for relief from reporter's fees under § 221.75.

§ 221.93 *Record address.* Every person who files a document in connection with an appeal, contest or protest shall at the time of his initial filing in the matter state his address. Thereafter he must promptly inform the office in which the filing was made of any change in address, giving the serial or other appropriate numbers of all matters in which he has made such a filing. The successors of such person shall likewise promptly inform such office of their interest in the matters and state their addresses. If a person fails to furnish a record address as required in this section, he will not be entitled to notice in connection with the proceedings on the matter.

§ 221.94 *Transferees and encumbrancers.* Transferees and encumbrancers of land, the title to which is claimed or is in the process of acquisition under any public land law shall, upon filing notice of the transfer or encumbrance in the proper land office, become entitled to receive and be given the same notice of any contest, appeal, or other proceeding thereafter initiated affecting such interest which is required to be given to a party to the proceeding. Every such notice of a transfer or encumbrance will be noted upon the records of the land office. Thereafter such transferee or encumbrancer must be made a party to any proceedings thereafter initiated adverse to the entry.

§ 221.95 *Service.* (a) Wherever the regulations in this part require that a copy of a document be served upon a person, service may be made by delivering the copy personally to him or by sending the document by registered or certified mail, return receipt requested, to his address of record in the Bureau.

(b) In any case service may be proved by an acknowledgment of service signed by the person to be served. Personal service may be proved by a written statement of the person who made such service. Service by registered or certified mail may be proved by a post-office return receipt showing that the document was delivered at the person's record address or showing that the document could not be delivered to such person at his record address because he had moved therefrom without leaving a forwarding address or because delivery was refused at that address or because no such address exists. Proof of service of a copy of a document should be filed in the same office in which the document is filed except that proof of service of a notice of appeal should be filed in the office of the officer to whom the appeal is made, if the proof of service is filed later than the notice of appeal.

(c) A document will be considered to have been served at the time of personal service, of delivery of a registered or certified letter, or of the return by the post-office of an undelivered registered or certified letter.

(d) In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the same on behalf of his client, and service of any document relating to the proceeding upon such attorney will be deemed to be service on the party he represents. Where a party is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

§ 221.96 *Computation of time for filing and service.* In computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed from or answered was received or the day of any other event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, Federal legal holiday, or other non-business day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other non-business day. When the time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, Federal legal holidays, and other non-business days shall be excluded in the computation.

§ 221.97 *Extensions of time.* (a) With the exception of the time fixed for filing a notice of appeal, the time for filing

or serving any document in connection with an appeal may be extended by the officer to whom the appeal is taken.

(b) The Manager or the Examiner, as the case may be, may extend the time for filing or serving any document in connection with a contest.

(c) A request for an extension of time must be filed within the time allowed for the filing or serving of the document and must be filed in the same office in which the document in connection with which the extension is requested must be filed.

§ 221.98 *Summary dismissal.* An appeal to the Director or to the Secretary will be subject to summary dismissal by the officer to whom it is made for any of the following causes:

(a) If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required;

(b) If the notice of appeal is not served upon adverse parties within the time required; and

(c) If the statement of reasons, if not contained in the notice of appeal, is not served upon adverse parties within the time required.

§ 221.99 *Basis of decisions; record.* (a) The record of a hearing shall consist of the transcript of testimony or summary of testimony and exhibits together with all papers and requests filed in the hearing.

(b) If a hearing has been held on an appeal pursuant to instructions of the Director, this record shall be the sole basis for decision insofar as the referred issues of fact are involved except to the extent that official notice may be taken of a fact as provided in § 221.100.

(c) Where a hearing has been held in a contest the record made shall be the sole basis for decision except to the extent that official notice may be taken of a fact as provided in § 221.100.

(d) In any case, no decision on appeal or in a contest shall be based upon any record, statement, file or similar document which is not open to inspection by the parties to the appeal or contest.

§ 221.100 *Official notice.* Official notice may be taken of the contents of the tract books, the serial registers, the approved plats of survey and other public records of the Department of the Interior and of any matter of which the courts may take judicial notice. Where a decision in a case in which a hearing has been held rests upon official notice of a material fact relating to an issue upon which the hearing was held, the decision will so state and will allow any party upon request to have an opportunity to show to the contrary. Such request must be filed and served within the time and in the manner prescribed in the decision. Where a decision or recommendation has rested upon such official notice and has afforded the parties an opportunity to show to the contrary, no further opportunity to show to the contrary will be allowed.

§ 221.101 *Effect of decision pending appeal.* Normally a decision will not be effective during the time in which a person adversely affected may file a notice of appeal, and the timely filing of a notice of appeal will suspend the effect of the decision appealed from pending the decision on appeal. However, when the public interest requires, the officer to whom an appeal may be or is taken may provide that a decision or any part of it shall be in full force and effect immediately.

§ 221.102 *Regulations governing practice before the Department.* Every individual who wishes to practice before the Department of the Interior, including the Bureau, must comply with the requirements of Part 1 of this title.

§ 221.103 *Inquiries.* No person other than officers or employees of the Department of the Interior shall direct any inquiry to any employee of the Bureau with respect to any matter pending before it other than to the head of the unit in which the matter is pending, to a superior officer, or to an employee of the unit authorized by the unit head to answer inquiries.

§ 221.104 *Compulsory attendance of witnesses.* The Field Commissioner or the examiner, as the case may be, is authorized to issue subpoenas directing the attendance of witnesses at hearings to be held before him or at the taking of depositions to be held before himself or other officers. The issuance of subpoenas, service, attendance fees, and similar matters shall be governed by the act of January 31, 1903 (43 U. S. C. 102–106), and 28 U. S. C. 1821. Subpoenas will be issued on Form No. 4–622.

§ 221.105 *Application for subpoena.* An application for a subpoena may be filed in the office of the Field Commissioner or the examiner before whom the hearing is to be held, in the office of the officer who made the decision appealed from, or in the office of the manager in which a complaint was filed, in which case the officer or manager will forward the application to the Field Commissioner or the examiner, as the case may be.

§ 221.106 *Fees payable to witness who testifies on request without issuance of subpoena.* Any witness who attends any hearing or the taking of any deposition at the request of any party to the controversy without having been subpoenaed to do so shall be entitled to the same mileage and attendance fees, to be paid by such party, to which he would have been entitled if he had been first duly subpoenaed as a witness on behalf of such party.

§ 221.107 *Power of Secretary.* Nothing in this part shall be construed to deprive the Secretary of any power conferred upon him by law.

This Circular replaces Circulars 1950, 1962 and 1997

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